

**M2 Consulting, Inc. v.
MRO Software, Inc., et al.**

**Thomas R. Bevington
Vol. 1, July 26, 2005**

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Exhibits 2 to 52
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
(EASTERN DIVISION)
M2 CONSULTING, INC., :
Plaintiff, :
vs. : Civil Action
: No. 03-12589-GAO
MRO SOFTWARE, INC., and CRAIG :
NEWFIELD, :
Defendants. :
DEPOSITION OF THOMAS RICKEY BEVINGTON, a
witness called on behalf of the Defendants, taken
pursuant to the Federal Rules of Civil Procedure,
before Linda A. Walsh, Registered Professional
Reporter and Notary Public in and for the
Commonwealth of Massachusetts, at the Offices of
Gesmer Updegrave LLP, 40 Broad Street, Boston,
Massachusetts, on Tuesday, July 26, 2005, commencing
at 10:02 a.m.
PRESENT:
Fee, Rosse & Lanz, P.C.
(By Mark S. Resnick, Esq.)
321 Boston Post Road, Sudbury, MA 01776,
for the Plaintiff.
Gesmer Updegrave LLP
(By Lee T. Gesmer, Esq.,
and Kurt Bratten, Esq.)
40 Broad Street, Boston, MA 02109,
for the Defendants.

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EXHIBITS, Continued

MRO NO.	DESCRIPTION	PAGE
8	Document entitled "Presentation to MRO Software by Rick Bevington, Tony Prelec on 1/25/01," Bates Nos. M2C000013-29	
9	E-mail dated March 14, 2001, to Rick Bevington from Tom Schulte	7
10	E-mail dated June 7, 2001, to Rick Bevington from Tom Schulte with attachment	
11	E-mail dated November 1, 2001, to Bob Parker from Ray Miciek	
12	E-mail dated November 20, 2001, to Ray Miciek from Rick Bevington	
13	E-mail thread regarding sale and rental model	7
14	E-mail thread regarding new spreadsheet	7
15	E-mail dated November 27, 2001, to Bob Parker from Rick Bevington, Bates Nos. MRO00825-826	
16	E-mail dated December 17, 2001, to Ray Miciek from Iris Martin, Bates Nos. MRO00483, MRO00491-497	
17	E-mail dated January 30, 2002, to Bob Parker from Ray Miciek, Bates Nos. MRO00827-837	
18	E-mail with attached agreement	7
19	E-mail regarding MRO Software Agreement and Exhibit A dated May 17, 2002	7

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EXHIBITS
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NO. DESCRIPTION PAGE
2 Document entitled "MRO Software, Inc. Maximo Hosting Affiliate Agreement between MRO Software, Inc. and M2 Consulting, Inc." 7
3 Document entitled "Agreement between M2 Consulting, Inc. and PSDI for Maximo Application between M2 Consulting, Inc. And Project Software & Development, Inc." 7
4 Document entitled "Amended Complaint" 7
5 Document entitled "Business Plan PSDI Maximo and M2 Application Hosting Services, 9/1/99," Bates Nos. M2C000273-290 7
6 E-mail thread re software hosting agreement, Bates No. MRO02628 7
7 E-mail thread re update 7

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[1] A: I felt I already had it.
[2] Q: Explain what you mean by that.
[3] A: The only piece of the proposed business
[4] plan that MRO indicated was not really their cup of
[5] tea was the forming of a separate business entity
[6] with M2 — partnership, legal partnership with M2,
[7] you know, and making cash investment into it. They
[8] just don't have those types of relationships
[9] apparently. I don't think they do now. The rest of
[10] it looked like a good deal for everybody.
[11] Q: Who wrote the March 2000 agreement?
[12] A: I wrote it. Ted Williams, you know, tuned
[13] it.
[14] Q: Do you have the drafts of this agreement
[15] that preceded the final version?
[16] A: I know I have seen various times the draft
[17] with the knuckle notes on it. I can't guarantee
[18] that I saw it and forwarded it to you fellows or
[19] it's been lost or whatever. But, yeah, I have seen
[20] it.
[21] Q: But if you have them you have provided them
[22] in this case, correct?
[23] A: Yes, I have seen them. If I could find
[24] them, you have got them, yes. No reason to withhold

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[1] it.
[2] Q: Did drafts of this agreement go back and
[3] forth before the final was arrived at?
[4] A: No. There is really the original version;
[5] then there was Ted's comments; then there was a
[6] discussion with Nancy Gilroy to try to read and
[7] interpret Ted's comments; then there was the final
[8] that she and I signed and I am sure he read.
[9] Q: And at any point did you attempt to put in
[10] this agreement a commitment by MRO to roll out the M2
[11] service to the MRO sales force?
[12] A: Yes.
[13] Q: And where did you express that?
[14] A: In the agreement. It would be in — under
[15] "PSDI agrees to provide Item 3."
[16] Q: Did you write that sentence?
[17] A: Yes.
[18] Q: And did you write the words, "as they deem
[19] appropriate"?
[20] A: That may have been Ted's knuckle note. I
[21] don't remember. I may have done it as an
[22] accommodation on an understanding of their business,
[23] but I don't remember exactly.
[24] Q: What's a knuckle note?

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[1] A: Writing in the margin. Sorry. I'm an
[2] old-fashioned guy.
[3] Q: So am I. That must be an Atlanta
[4] expression.
[5] A: I don't know.
[6] Q: Did you understand that this Paragraph 3 in
[7] the March 2000 agreement gave MRO the discretion to
[8] provide M2 with leads?
[9] MR. RESNICK: Objection.
[10] A: The — sure.
[11] Q: Now, as the first year of this agreement
[12] began to unfold, late March 2000 through the end of
[13] the year and through to March of the next year, you
[14] observed that MRO was not giving its salespeople an
[15] incentive to sell your service, correct?
[16] A: Correct.
[17] Q: And you were not happy with that — you
[18] were unhappy with that, correct?
[19] A: Well, to back up a little bit, they weren't
[20] doing what they would typically do with a service
[21] product rollout, inform their salespeople that this
[22] solution is available, tell them, you know, how to
[23] describe it to the client and how to price it, tell
[24] them what's in it for them and what are their

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[1] chances of success and other things salespeople want
[2] to know. None of that activity was occurring. And
[3] I want to just back up one other. There is another
[4] line down here that was written with a view to MRO
[5] providing the sales force power on this, and that's
[6] under "General," No. 1.
[7] Q: What page? Are you back on Exhibit 3?
[8] A: Yes. I'm sorry.
[9] Q: Where are you on Exhibit 3?
[10] A: Page 2 under "General," Item 1.
[11] Q: Yes.
[12] A: That was an assurance that the activity
[13] would occur on M2's part when PSDI brought the
[14] prospects to bear. We didn't expect them to finish
[15] the sales cycle. We expected them to take it to a
[16] certain point.
[17] Q: Now, again, going back — I understand.
[18] Thank you.
[19] Going back to the first 12 months of the
[20] relationship, say March 2000 to March 2001, MRO was
[21] not providing the sales force power that you wanted
[22] them to provide, correct?
[23] A: Correct.
[24] Q: And what is it that they were not doing

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[1] of this seat versus... All of those things that you
[2] said I expected. I didn't focus very much on
[3] compensation at that time.

[4] **Q:** What conversation — before the March 2000
[5] agreement was signed what communications did you
[6] have with MRO that caused you to believe that these
[7] activities would occur after the agreement was
[8] signed?

[9] **A:** Every communication I had. There would be
[10] no other reason for me to have these — to
[11] communicate with MRO. I mean, it was understood
[12] from the outset that, you know, nobody was doing
[13] this. It's an alternate delivery methodology. It
[14] has the prospect of incremental revenue to MRO. We
[15] have got somebody else over here who is going to
[16] invest in it. It's kind of a no brainer. They are
[17] a little ahead of the curve. We don't want to be on
[18] the bleeding edge. Let's go, and that's from
[19] Drapeau on down.

[20] **Q:** Were you represented by a lawyer when this
[21] 2000 agreement was being negotiated?

[22] **A:** No. Can't you tell? I wrote it.

[23] **Q:** I can tell.

[24] **A:** Yes. I'm sorry.

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[1] **Q:** I understand that you are saying that every
[2] communication supported your expectation that this
[3] rollout would occur after the 2000 agreement was
[4] signed, but can you recall for me specific words in
[5] which MRO indicated that to you or expressed that to
[6] you?

[7] **A:** I doubt I can remember specific words, but
[8] there was a need to get this agreement, the '00
[9] agreement, in place before we could do that, meaning
[10] MRO. I don't want to call it foot dragging, but
[11] there was — it was probably low priority, but there
[12] was some meaningful time frames between the major
[13] mileposts in moving this forward, and in all of
[14] those discussions and all of the encouraging phone
[15] calls and e-mails I would make between here, the '99
[16] presentation and this one (indicating), it was all
[17] about, "Yes, we want to get this going, too. Yes,
[18] we want to get this going, too. We just need to get
[19] the papers in place." It was never a question in my
[20] mind. We selected MRO to be our partner in this.

[21] **Q:** Let me ask you again, can you recall any
[22] specific communication or conversation with MRO
[23] where MRO — and by "MRO" I mean an employee or
[24] executive — told you that MRO would roll out this

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[1] service after the agreement was signed?

[2] **A:** Oh, yeah, yeah. Yes, Ted Williams said
[3] that. Milton Bevington said that. Chip is hard to
[4] get ahold of, but you know, he's the one that gets
[5] the ball rolling after the '99 meeting and then
[6] delegates. It was delegated to Ted, and my brother
[7] worked for Ted. And at the time Ted was sales and
[8] marketing so he had a lot on his plate.

[9] **Q:** So the statements I have asked you about
[10] were said to you by Mr. Williams, by your brother
[11] Milton Bevington, and by the president of MRO,
[12] Norman Drapeau?

[13] **A:** Yes.

[14] **Q:** What did Mr. Drapeau say to you on this
[15] subject?

[16] **A:** I don't know the exact words, but you know,
[17] "Good plan. Let's do it." You know, "Look forward
[18] to the mutually beneficial outcome," you know, that
[19] kind of stuff. You don't see Chip all the time. It
[20] was subsequent to the '99 meeting. I have seen Chip
[21] in a couple — three times during this whole process
[22] of getting it done, but he'd try not to have to go
[23] back to the well.

[24] **Q:** Have you told me everything that

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[1] Mr. Drapeau said to you on the subject of the
[2] rollout after the March 2000 agreement was signed —
[3] strike that. That was not a good question.

[4] Have you told me now everything that
[5] Mr. Drapeau said to you on the subject of the
[6] rollout prior to, before the March 2000 agreement
[7] was signed?

[8] **A:** I believe so.

[9] **Q:** And you mentioned your brother Milton
[10] Bevington. Are you close to him as siblings?

[11] **A:** Not like other siblings are probably.

[12] **Q:** Do you have any agreement or understanding
[13] with him regarding sharing the proceeds of any
[14] judgment or settlement in this case?

[15] **A:** No.

[16] **Q:** What did Mr. Williams say to you regarding
[17] the rollout of your service before the March 2000
[18] agreement was signed?

[19] **A:** He essentially delegated the execution
[20] road. When the CEO says, "We are going to do this.
[21] Ted, you take the lead," Ted's job is to execute.

[22] **Q:** But my question to you, Mr. Bevington, is
[23] what did Mr. Williams say to you on this subject?

[24] **A:** Well, a whole lot of stuff about, you know,

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[1] got to get the agreement, got to get the agreement,
[2] then we can roll it out. Then we can get started.
[3] Then I can have executed what Chip told me to
[4] execute. There is no renegotiation, reevaluation,
[5] rethinking, restating of what had already been
[6] decided between Ted and I. The decision had been
[7] made.
[8] Q: And the decision was made at the meeting
[9] where the September 1st, 1999, business plan was
[10] discussed?
[11] A: Yes. That's typically —
[12] Q: And —
[13] A: I'm sorry.
[14] Q: End of question.
[15] A: Yes.
[16] Q: So did you talk to Mr. Drapeau between that
[17] meeting and the March — and March 23rd, 2000?
[18] A: I don't recall, but I more than likely did
[19] either by voice or e-mail.
[20] Q: So the — at that meeting, the September
[21] '99 meeting, Mr. Drapeau — you presented the
[22] business plan, and Mr. Drapeau said, "Sounds good.
[23] Let's go forward" — subject to there not being an
[24] investment, but he said, "Let's go forward with

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[1] using M2 as a company that will provide hosting
[2] services for Maximo"?
[3] A: Yes.
[4] Q: In essence?
[5] A: Yes.
[6] Q: And what did he say at that meeting about
[7] rolling out the product to the MRO sales force?
[8] A: He delegated it to Ted, Ted on the sales
[9] force.
[10] Q: What did he say?
[11] A: Ted will take the lead on getting this done
[12] or something to that effect.
[13] Q: Do you recall more specifically what he
[14] said about the rollout?
[15] A: Well, the "it" in getting it done is, you
[16] know, get the relationship documented, you know, and
[17] then, you know, introduce and roll this out to the
[18] sales force, what we had discussed in the business
[19] plan, net of the partnership.
[20] Q: Is that in effect what Mr. Drapeau said to
[21] Mr. Williams at or just after this meeting?
[22] A: Yeah, because that's why Mr. Williams
[23] became my contact. Before that I brought — you
[24] know, I went to Chip to make this presentation. I

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[1] didn't go to Ted.
[2] MR. GESMER: Why don't we take a short
[3] break.
[4] (Recess taken from 11:25 to 11:30 a.m.)
[5] BY MR. GESMER:
[6] Q: Have you told me about every conversation
[7] you had with MRO before the March agreement was
[8] signed, the March 2000 agreement was signed, where
[9] the rollout was discussed, details of the rollout
[10] was discussed.
[11] A: From September '99 to March?
[12] Q: 2000.
[13] A: Have I told you about every communication?
[14] Q: Yes.
[15] A: No.
[16] Q: What else — what have you not told me
[17] about? What else is there?
[18] A: Well, you know, on your Exhibit 6 here, you
[19] know, I wouldn't have remembered that communication
[20] to Ted for which I got a response from Ted, and
[21] there is similar ones communication-wise.
[22] Q: What you just pointed to on Exhibit 6, what
[23] is it about Exhibit 6 that is responsive to my
[24] question?

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[1] A: Could you repeat the question, please.
[2] Q: Well, the previous question — let me try
[3] it again. What I'm trying to do here is exhaust
[4] your memory, which is a term that lawyers use a lot,
[5] about communications you had with MRO before the
[6] March 2000 agreement was signed where this rollout
[7] was discussed, the rollout by MRO of your service
[8] was discussed?
[9] A: I probably told you all that I can
[10] remember. The focus — you know, these things go in
[11] steps. Prior to any rollout or rollout — major
[12] rollout discussion a document had to be in place.
[13] So once that's in place and you go to the next, the
[14] next. I may have had several conversations with my
[15] brother to try to learn about the MRO sales force,
[16] its structure, its organization, you know, how many,
[17] you know, how they are organized, da-ta-ta-ta.
[18] Q: Now, after the agreement was signed, as the
[19] first year or so following the agreement unfolded,
[20] you realized, firstly, that MRO was not rolling out
[21] the product — should we call your company's
[22] hosting — your Mantis for Maximo, should we call
[23] that a service or a product?
[24] A: I call it a service.

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[1] North America. You could tell.
[2] **Q:** Well, after Mark asked Mr. Williams about
[3] that I couldn't help but get some clarification of
[4] that critical point.
[5] **A:** I thought it might joggle a couple of
[6] memories there.
[7] **Q:** No, afraid not.
[8] **A:** Maybe not.
[9] **MR. RESNICK:** No, we tried.
[10] **Q:** Now, during this meeting — this golf
[11] meeting with Mr. Williams and Mr. Parker, was
[12] business discussed?
[13] **A:** Yes.
[14] **Q:** What business was discussed?
[15] **A:** If we sign this new agreement will
[16] we — will you in fact do what you have always said
[17] you are going to do, roll it out to North American
[18] sales or roll it out to sales I think I said. And
[19] the both of them replied, "We'll roll it out
[20] immediately to North American sales" with Thayer
[21] Stewart and I. I can run the video in my head but
[22] unfortunately you can't see it. And that was the
[23] commitment we wanted to hear on the, you know, MRO
[24] side, and then we had to weight that with the Indus

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[1] discussions.
[2] **Q:** And did you at that point say to
[3] Mr. Williams and Mr. Parker, "Well, you know, we
[4] have been talking about this for two and a half
[5] years. You never did the rollout after we discussed
[6] it in '99. Let's put this in the agreement that we
[7] are negotiating"?
[8] **A:** No.
[9] **Q:** What other business was discussed at this
[10] golf day?
[11] **A:** I can't remember any. It was probably just
[12] chitchat. The purpose of the event was to lock them
[13] in on we have got the 50 percent now. Now Chip is
[14] waiting. Everybody is waiting. You know, we have
[15] been doing this forever. Is this in fact the last
[16] thing I have got to do in order to have you roll
[17] this out, sign this new agreement, get me on new
[18] paper. He wrote, "Yes, sir."
[19] **MR. GESMER:** Let's take a short break, five
[20] minutes.
[21] (Recess taken from 2:43 to 2:51 p.m.)
[22] **BY MR. GESMER:**
[23] **Q:** Going back to Exhibit 28 for a moment.
[24] **A:** Yes, sir.

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[1] **Q:** You wrote — at the top e-mail to
[2] Mr. Parker you wrote, "I shared one" — you said,
[3] "There are only a couple of issues I'm trying to get
[4] with Ray on. I shared one with Nancy but I think
[5] it's out of her domain (sales quotas for M2)." Did
[6] you mean by that that this was a business issue that
[7] she didn't have the authority to resolve?
[8] **A:** No, no. I meant that she didn't
[9] understand. She'd started a negotiation on an item
[10] by using the VAR agreement giving me a quota that,
[11] you know, had had too much going back and forth.
[12] She obviously didn't understand. Maybe not — yes,
[13] she just didn't get it.
[14] **Q:** After this meeting at the Abbey, this golf
[15] day at the Abbey with Mr. Williams and Mr. Parker,
[16] you did not write to either of them and say in
[17] effect, "I want to confirm the agreement that we
[18] reached yesterday, that if we sign this new
[19] agreement with a 50 percent commission you will roll
[20] out our service to your sales force"?
[21] **A:** No, I didn't.
[22] **Q:** Look at Exhibit 29, please. Do you
[23] recognize this e-mail, first page?
[24] **A:** Yes.

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[1] **Q:** You wrote — before — if you look at Page
[2] 2 you'll see that this is a response to her July
[3] 11th e-mail which we have already looked at that was
[4] Exhibit 26 where she says, "It doesn't make sense
[5] that MRO has a sales quota for M2, therefore, I put
[6] the original back in"?
[7] **A:** Uh-huh.
[8] **Q:** And there are a couple of e-mails between
[9] you and Iris Martin in between but then eventually
[10] you send her a response in which you say, "We have
[11] accepted your changes except as noted. I believe
[12] the real issues are in the area of quota/sales
[13] responsibility and termination obligations. We need
[14] to see MRO take some position vis-a-vis the sales
[15] channel. I assume that there will be other hosting
[16] affiliates. How will we fare 'sales lead' wise with
[17] these others. Termination for convenience still
[18] does not give us the business/investment protection
[19] we need. What will happen to those customers who
[20] want to renew 'post termination'? Will MRO want to
[21] assume that business or another 'hosting affiliate'?
[22] Do we buy seats to continue? Would we be given that
[23] opportunity on a fair basis? I just don't know.
[24] These may not be questions that you can answer, but

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[1] I said, "I didn't say a word. I don't know where
[2] they are coming from." But I have worked in
[3] corporate America at bigger companies for a long
[4] time. I was figuring that Rich Caplow was laying
[5] one on me. So I wanted to clear the deck with my
[6] buddies that I'm not a person that's putting down
[7] their big deal with IBM, because I usually don't
[8] write Chip little notes about what he's been up to.
[9] Q: Now, on the top message on this e-mail
[10] thread, 11/19/2002, still on Exhibit 37, you thank
[11] Bob for the reply and you say, "Ray and I talked
[12] about getting a proposed rollout plan to you." What
[13] did you have in mind when you wrote that sentence?
[14] A: Well, now that we had the agreement signed
[15] we would go back into the rollout mode. I knew it
[16] was Ray's job. So I was going to help Ray help Bob
[17] do what they had always said we needed to do.
[18] Q: In your mind at that point what did the
[19] proposed rollout plan consist of?
[20] A: It would have consisted of, you know, an
[21] announcement to sales, announcement to the
[22] marketplace, you know, put — you know, announce the
[23] compensation plan to the sales force, put the whole
[24] thing in their sales briefcase, if they needed

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[1] training or seminars or whatever, you know, as it
[2] had always been.
[3] Q: What did you understand the compensation
[4] plan to the MRO sales force was at that point or was
[5] going to be under this plan?
[6] A: I didn't know anything more than I had
[7] funded it. I had made arrangements to fund it 50
[8] percent as opposed to 20. I signed that document.
[9] We are really going to go this time. The document
[10] is signed, and I'm going, okay, we are really going
[11] to go this time. Crank it up and do it.
[12] MR. GESMER: Could you read the answer to
[13] two questions back to me, please.
[14] *(Answer read)
[15] Q: Do you know what the — did you have an
[16] understanding with MRO at this point — at this
[17] point in time when you wrote this November 2002
[18] e-mail, November 19, 2002, e-mail, did you have an
[19] understanding with MRO as to what the announcement
[20] would consist of?
[21] A: Well, I assumed we'd just go back to some
[22] of the work we had done in the past when it was on
[23] the verge of being rolled out. We had written a
[24] document I think you produced here that was a press

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[1] release, a document informing sales, question and
[2] answer document how you deal with your customer. I
[3] think we produced that there. The compensation
[4] apparently had been agreed to. Bob said okay, had
[5] his little deal. It was just a matter of putting it
[6] all together again. By this time the world was into
[7] Webcast so Ray put that into the thing. When we
[8] first started this there weren't very many Webcasts.
[9] Q: When you say "Ray put that into the thing,"
[10] what does that mean?
[11] A: Well, he committed to Webcast in the spring
[12] of '03. That's well documented. That's a noun that
[13] probably wasn't in any of our previous discussions
[14] because it really didn't exist as a viable method of
[15] communicating to internal audiences or external
[16] audiences. But, yes, it was just bring it back up
[17] together, roll it out. That's why I signed the
[18] agreement.
[19] Q: Have you ever been to MRO World?
[20] A: Yes.
[21] Q: How many times?
[22] A: I think twice.
[23] Q: Did you have a booth on either occasion?
[24] A: On one occasion.

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[1] Q: July 2002?
[2] A: That would be correct.
[3] Q: Did MRO cooperate with you in that respect?
[4] A: Yes, sure. I paid them the \$25,000, and I
[5] got what you get for it.
[6] Q: Do you remember MRO introducing M2 to the
[7] Geography Aviation Public Sector Region?
[8] A: Geography Aviation Public Sector Region,
[9] would that be at that particular conference?
[10] Q: Yes.
[11] A: Well, what I remember is that the Collier
[12] Mosquito Control District, who runs a fleet of DC-3s
[13] and other type aircraft to spray the Naples area for
[14] mosquitoes, that we had implemented Maximo there,
[15] and that Stacey Welsh, the customer's
[16] representative, was presenting at that particular
[17] session. And we were there because we had done
[18] something that MRO had never done before, and they
[19] wanted to use it as reference. It wasn't a hosting
[20] job.
[21] Q: Look at Exhibit 38, please.
[22] A: Yes.
[23] Q: Did you sign this document?
[24] A: Yes.

**M2 Consulting, Inc. v.
MRO Software, Inc., et al.**

**Thomas R. Bevington
Vol. 1, July 26, 2005**

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[1] pushing this ball forward. If Ray gets — you know,
[2] there is a lot of little impediments that have been
[3] thrown up over the previous three years. We don't
[4] want Ray's inability to construct the message to be
[5] the next one. And this had been, you know,
[6] circulated, what, a couple of months before anyway.
[7] **Q:** What did you mean when you said — when you
[8] asked, "Did you guys release QuickStart to sales?"
[9] What did that mean?
[10] **A:** This agreement for professional services.
[11] This one. It's Exhibit 38. This agreement which I
[12] signed on January 3rd is the provision for them
[13] buying QuickStart services from me and reselling
[14] them to their end users. We would be their back
[15] room, back office. So I negotiated and signed an
[16] agreement. I was following up to see whether or not
[17] the salespeople were selling it, separate deal from
[18] hosting.
[19] **Q:** How would the sale of QuickStart by MRO's
[20] sales force work?
[21] **A:** Our implementation methodology is hugely
[22] more efficient than most software vendors. So, you
[23] know, the description that we went through earlier
[24] about what QuickStart is, that we can do all that

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[1] stuff, put it up in a matter of days, do an
[2] iteration with the customer and boom, let's go, that
[3] could be anywhere from a \$10,000 to a \$100,000 job.
[4] Any job below 50, 60, 75, 80, \$100,000 is of no
[5] interest to MRO's professional services group. So
[6] it benefited Ray to use our implementation services
[7] which were inexpensive enough that if he marked them
[8] up to what we sold them for in the marketplace they
[9] would be making their run rate gross margin as they
[10] would in regular professional services.
[11] **Q:** So the idea was that MRO would sell your
[12] services, your consultant services, in the form of
[13] QuickStart?
[14] **A:** No. They would sell software and
[15] implementation, okay, for a price, and they turn
[16] around and have us do the work and then they deliver
[17] that to the customer. They bill the customer. The
[18] customer pays them. We bill MRO, and MRO would pay
[19] us.
[20] **Q:** Did that ever happen?
[21] **A:** No. Well, not per this signed agreement,
[22] but we have — we have done professional services
[23] for MRO that were sold by MRO, delivered by us, paid
[24] to MRO and MRO paid us, but not as formal as — I

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[1] think that's why this came about.
[2] **Q:** Okay. That happened before that
[3] professional services agreement was signed?
[4] **A:** Yes.
[5] **Q:** Before January of 2003?
[6] **A:** I believe so, yes. It must have been.
[7] **MR. GESMER:** Next exhibit, please.
[8] (Document marked as MRO
[9] Exhibit 42 for identification)
[10] **Q:** Do you recognize these handwritten notes?
[11] **A:** Yes.
[12] **Q:** Is this your handwriting?
[13] **A:** Yes.
[14] **Q:** And when did you take these notes?
[15] **A:** June 17th, 2003.
[16] **Q:** And what — would you read the notes to us,
[17] please.
[18] **A:** The first one in quotation marks, "Contrary
[19] to all I have talked to you in the past," end
[20] quotation. Well, at the top it says, "Bob Parker
[21] 6/17/03." The next quotation mark sentence is "I
[22] have learned a lot about this stuff over time,"
[23] close quotations. Circled sentence in the center
[24] "Ten user minimum - out. I apologize" and

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[1] "Everything he told us was true. He doesn't make
[2] company policy. There won't be an opportunity."
[3] **Q:** Now, would you tell me what you said and
[4] what Mr. Parker said during the conversation that
[5] lead to your writing these notes.
[6] **A:** I had been informed several days ahead of
[7] this by Miciek that I was going to get a phone call
[8] I didn't like. And that was confidentially. When
[9] Parker called me, which he almost never does, I
[10] wrote down what he said. One of the sentences was
[11] "Contrary to all I have talked to you about in the
[12] past."
[13] **Q:** You have already read this.
[14] **A:** I'm sorry.
[15] **Q:** I don't want you to reread it.
[16] **A:** Okay.
[17] **Q:** Reading this once is fine. What I am
[18] asking you to do is to tell me what you remember
[19] about the conversation. And if you don't remember
[20] anything more than is written here, that's fine, but
[21] I would like your independent recollection of the
[22] conversation.
[23] **A:** Essentially what's written here is what was
[24] said. I tried to write down everything Parker said.

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[1] He did say that they are going to go into the
 [2] hosting business, and I said, "Does that mean you
 [3] are not going to roll our service out to your sales
 [4] force?" And he paused and he said, "Well, yeah. I
 [5] guess that's what it means." And the rest is
 [6] essentially on this paper.
 [7] Q: These are his words?
 [8] A: Yes.
 [9] Q: What did you say?
 [10] A: The bulk of what I said was, "Does this
 [11] mean you are not going to roll out our program to
 [12] the sales force?" Because I wasn't willing to make
 [13] the connection between them going into the business
 [14] and them breaking their agreement with me.
 [15] Apparently there is a very tight connection in some
 [16] people's minds. And I am sure I said, you know, our
 [17] good-byes. I didn't burn any bridges or anything.
 [18] Q: Have you told me now everything you
 [19] remember about this conversation?
 [20] A: Yes, everything I remember as of this
 [21] second.
 [22] MR. GESMER: Now, let's mark Exhibit 43,
 [23] please.
 [24]

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[1] (Document marked as MRO
 [2] Exhibit 43 for identification)
 [3] Q: Now, after you had the conversation with
 [4] Bob Parker on June 17th you sent him this e-mail
 [5] about ten days later?
 [6] A: Uh-huh.
 [7] Q: Is that right?
 [8] A: Yes, sir.
 [9] Q: You described MRO's decision to become a
 [10] first party hoster, meaning they would host
 [11] themselves, right?
 [12] A: Yes.
 [13] Q: You were a third-party hoster?
 [14] A: Yes.
 [15] Q: They would be a first-party hoster, right?
 [16] A: Yes.
 [17] Q: "We view this as a very positive step for
 [18] MRO and a potential opportunity for M2 Consulting.
 [19] We will bring a tabletop discussion presentation on
 [20] our perspective. We look forward to a productive
 [21] and exciting discussion. See you there." Now,
 [22] what — and it refers to a meeting on July 1st, 2
 [23] p.m.?
 [24] A: Yes.

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[1] Q: Did that meeting take place?
 [2] A: Yes, sir.
 [3] Q: Where?
 [4] A: Naples, Florida.
 [5] Q: Who attended?
 [6] A: Chip Drapeau, Bill Sawyer, Ray Miciek,
 [7] Thayer Stewart, myself; that's all I remember. If
 [8] there was more there was only one more or so.
 [9] Parker may have been there. I don't know.
 [10] Q: And what was the — what did you understand
 [11] the purpose of this meeting to be — well, strike
 [12] that.
 [13] Who called the meeting?
 [14] A: We did, M2, I did.
 [15] Q: And was it as a result or a response to
 [16] Mr. Parker's call to you on June 17th?
 [17] A: Yes.
 [18] Q: And what did you say to MRO would be the
 [19] purpose of this meeting?
 [20] A: That's all I said.
 [21] Q: So Mr. Drapeau and Mr. Sawyer traveled down
 [22] from Massachusetts?
 [23] A: No. They had a professional services
 [24] meeting in conjunction, you know, in Naples. So

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[1] like I flew in and I think Jeff Foley was there and
 [2] then Thayer flew in from someplace he was at. But I
 [3] think the MRO guys were in doing business already
 [4] there.
 [5] Q: And did you tell anyone at MRO either in
 [6] another writing or by voice what you viewed the
 [7] purpose of the meeting to be?
 [8] A: I may have talked to Ray Miciek, you know,
 [9] and told him.
 [10] Q: What was the purpose of the meeting, in
 [11] your mind?
 [12] A: To sell them our Maximo hosting business.
 [13] Q: To sell your company to them?
 [14] A: No. To sell our Maximo hosting business.
 [15] Q: To do an asset sale to them?
 [16] A: Essentially, yes.
 [17] Q: You presented this to them at this meeting?
 [18] A: Yes, and I believe that July 1 presentation
 [19] you have, which outlines all the business, all the
 [20] financials, all the customers.
 [21] Q: There is a PowerPoint presentation you are
 [22] referring to?
 [23] A: Yes, sir.
 [24] Q: Was there any discussion of MRO's decision

EXHIBIT

B

tabbles

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Page 1	Page 3
<p>1</p> <p>2 Volume: 1</p> <p>3 Pages: 1 to 209</p> <p>4 Exhibits: 60 to 73</p> <p>5 UNITED STATES DISTRICT COURT</p> <p>6 FOR THE DISTRICT OF MASSACHUSETTS</p> <p>7 C.A. No. 03-12589-GAO</p> <p>8</p> <p>9 M2 CONSULTING, INC.,)</p> <p>10 Plaintiff)</p> <p>11)</p> <p>12 vs.)</p> <p>13)</p> <p>14 MRO SOFTWARE, INC.,)</p> <p>15 Defendant)</p> <p>16</p> <p>17 DEPOSITION of ROBERT K. PARKER,</p> <p>18 a witness called on behalf of the</p> <p>19 Plaintiff, pursuant to the applicable</p> <p>20 provisions of the Massachusetts Rules of</p> <p>21 Civil Procedure, before Judith R. Sidel,</p> <p>22 Professional Court Reporter and Notary</p> <p>23 Public, in and for the Commonwealth of</p> <p>24 Massachusetts, at the Office of Gesmer</p> <p>Updegrave, LLP, 40 Broad Street, Boston,</p> <p>Massachusetts 02109, on Thursday,</p> <p>November 17, 2005, commencing at 10:00</p> <p>a.m.</p> <p>*****</p> <p>SHEA COURT REPORTING SERVICES</p> <p>ONE UNION STREET, SECOND FLOOR</p> <p>BOSTON, MASSACHUSETTS 02108-2408</p>	<p>1 I N D E X</p> <p>2 WITNESS DIRECT CROSS REDIRECT RECROSS</p> <p>3 Robert K. Parker</p> <p>4 (By Mr. Resnick) 5</p> <p>5</p> <p>6 E X H I B I T S</p> <p>7 NO DESCRIPTION PAGE</p> <p>8 60 E-Mail dated 3/6/02,</p> <p>9 Bates No. MRO 00135 161</p> <p>10</p> <p>11 61 E-Mail Chain dated 7/15/02,</p> <p>12 Bates Nos. MRO 00175 to MRO 00177 161</p> <p>13</p> <p>14 62 E-Mail Chain dated 3/01/02,</p> <p>15 Bates No. MRO 00133 161</p> <p>16</p> <p>17 63 Letter dated October 21, 2002 161</p> <p>18</p> <p>19 64 Handwritten Notes dated June 3 161</p> <p>20</p> <p>21 65 E-Mail Chain dated 5/30/03,</p> <p>22 Bates Nos. MRO 03467 to MRO 03469 161</p> <p>23</p> <p>24 66 E-Mail Chain dated 11/4/01,</p> <p>Bates Nos. MRO 00075 to MRO 00077 161</p> <p>67 E-Mail Chain dated 9/26/02,</p> <p>Bates No. MRO 00191 161</p> <p>68 E-Mail Chain dated 9/28/02,</p> <p>Bates No. MRO 00194 161</p> <p>69 E-Mail Chain dated 4/4/02,</p> <p>Bates No. MRO 00149 161</p> <p>70 E-Mail Chain dated 4/27/2002,</p> <p>Bates No. MRO 00154 161</p> <p>71 E-Mail Chain dated 4/16/02,</p> <p>Bates No. MRO 00152 161</p> <p>72 E-Mail Chain dated 5/2/02,</p> <p>Bates No. MRO 00155 161</p> <p>73 E-Mail Chain dated 11/16/01,</p> <p>Bates Nos. MRO 00078 to MRO 00082 161</p>
Page 2	Page 4
<p>1 APPEARANCES (Continued):</p> <p>2 MARK S. RESNICK, ESQUIRE</p> <p>3 FEE, ROSSE & LANZ, P.C.</p> <p>4 321 Boston Post Road</p> <p>5 Sudbury, Massachusetts 01776</p> <p>6 On behalf of the Plaintiff</p> <p>7</p> <p>8 KURT E. BRATTEN, ESQUIRE</p> <p>9 GESMER UPDEGROVE, LLP</p> <p>10 40 Broad Street</p> <p>11 Boston, Massachusetts 02109</p> <p>12 On behalf of the Defendant</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 S T I P U L A T I O N S</p> <p>2 It is hereby stipulated and</p> <p>3 agreed by and between counsel for the</p> <p>4 respective parties that the deposition</p> <p>5 will be read and signed under the pains</p> <p>6 and penalties of perjury. It is also</p> <p>7 stipulated that the notarization will be</p> <p>8 waived.</p> <p>9 Failure to sign transcript</p> <p>10 within thirty (30) days will deem the</p> <p>11 signature waived.</p> <p>12 It is further stipulated and</p> <p>13 agreed that all objections, except as to</p> <p>14 form, and motions to strike are reserved</p> <p>15 until the time of trial.</p> <p>16 * * *</p> <p>17 ROBERT K. PARKER, a witness</p> <p>18 called by counsel for the Plaintiff, upon</p> <p>19 production of driver's license, being</p> <p>20 first duly sworn, was examined and</p> <p>21 testified as follows:</p> <p>22 MR. RESNICK: My name is Mark</p> <p>23 Resnick. I represent the plaintiff in</p> <p>24 this action. Before we start, Counsel, I</p>

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1 MR. RESNICK: Strike that.
 2 Q. What did he say when you said that to
 3 him?
 4 A. That he had a need for that particular
 5 solution to deal with Datastream on the
 6 occasion where they brought up that
 7 option.
 8 Q. Did you give him permission to continue
 9 to explore a possible relationship with
 10 M2?
 11 A. Yes, I did.
 12 Q. What was the next thing you heard after
 13 that about M2?
 14 A. I can't recall exactly what I heard
 15 next.
 16 Q. When did you hear back from Ray about
 17 anything else having to do with M2 after
 18 you had that first discussion?
 19 A. He came back at some point in time, and,
 20 again, I'm not certain when, indicating
 21 that it was somebody he wanted to work
 22 with, and something he wanted to do.
 23 I know I made a trip to Atlanta to
 24 investigate, because I wanted to see

1 A. Met in his office. He presented his
 2 proposition, or what he felt his company
 3 could do for us. We toured the facility,
 4 and looked at the infrastructure he had
 5 in place. He explained how they dealt
 6 with the products and such.
 7 Q. Did he give you any business plan or
 8 paperwork at that point?
 9 A. I can't recall whether he did or didn't.
 10 Q. How many days was this trip?
 11 A. One.
 12 Q. Back and forth the same day?
 13 A. Correct.
 14 Q. And how much time did you spend with
 15 Mr. Bevington?
 16 A. Approximately two hours.
 17 Q. What was your impression?
 18 A. A little company, it was providing a
 19 service to a small market.
 20 Q. Did you request any additional
 21 information or material from M2 at that
 22 point?
 23 A. No, I did not.
 24 Q. And after your trip to Atlanta, did you

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1 the company, physically see it, see if
 2 they had an infrastructure in place,
 3 physically check out this company to make
 4 sure it was even real. It wasn't two
 5 guys in a garage.
 6 Q. Do you remember what year you took that
 7 trip?
 8 A. No, I do not.
 9 Q. Tell me about the trip? Did you meet
 10 Miciek in Atlanta?
 11 A. No, I did not go with Ray.
 12 Q. Did you go with anyone?
 13 A. No, I did not.
 14 Q. When you got to Atlanta, did you meet
 15 somebody from M2?
 16 A. Yes, I did.
 17 Q. Who?
 18 A. Rick.
 19 Q. Mr. Bevington?
 20 A. Mr. Bevington.
 21 Q. I want to make sure we got the same Rick
 22 here. You can call him Rick. Can you
 23 describe for me what happened during that
 24 trip?

1 have further discussions with Miciek
 2 about M2?
 3 A. Sure.
 4 Q. Can you summarize what was said during
 5 those discussions, to the best of your
 6 memory?
 7 A. I continued my concern about the size
 8 of the company, and the viability of
 9 a company that size, whether it was
 10 really a market that warranted the
 11 amount of energy and effort, the cycles
 12 we were putting into it. I was never
 13 enthusiastic about the market.
 14 Q. When you say "the market", you mean North
 15 American mid-tier?
 16 A. No, I meant hosted requirements. In
 17 other words, how many customers really
 18 wanted to host their services.
 19 Q. And when you say was it really worth the
 20 amount of energy that MRO was putting
 21 into it, what exactly was required on
 22 MRO's side? Strike that. What were you
 23 referring to when you just said the
 24 amount of energy and effort required to

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<p>1 of that.</p> <p>2 Q. Are you aware that M2 invested in the</p> <p>3 hardware to develop the web hosting</p> <p>4 capability for MAXIMO?</p> <p>5 A. Yes, I am.</p> <p>6 Q. And are you aware that the amount of that</p> <p>7 investment was approximately \$1 million?</p> <p>8 A. I believe I saw a document to that effect</p> <p>9 since we started this process.</p> <p>10 Q. Let's put a time frame on that then.</p> <p>11 When did you first become aware that</p> <p>12 MRO was buying the hardware in order</p> <p>13 to set up this capability?</p> <p>14 A. I don't believe MRO ever bought the</p> <p>15 hardware.</p> <p>16 Q. I'm sorry, I misspoke. When did you</p> <p>17 first become aware that M2 bought the</p> <p>18 hardware to develop this capability?</p> <p>19 A. Early on. I already stated I made a</p> <p>20 visit there, and saw the hardware they</p> <p>21 had in place.</p> <p>22 Q. Did Mr. Bevington, during that visit,</p> <p>23 tell you that if this relationship went</p> <p>24 forward, he would also add personnel?</p>	<p>1 issue specifically during the trip?</p> <p>2 A. I believe so, yes.</p> <p>3 Q. Can you tell me what you said to</p> <p>4 Mr. Bevington on that topic?</p> <p>5 A. I had a concern that they were a very</p> <p>6 small company, and we had a large number</p> <p>7 of salespeople. And how would they</p> <p>8 support that effort?</p> <p>9 Q. And when you say, "How would they support</p> <p>10 that effort", what specifically were you</p> <p>11 referring to?</p> <p>12 A. Well, I always see a relationship with</p> <p>13 a company like this as they're going to</p> <p>14 create incremental revenue. I already</p> <p>15 paid for 30 some odd salespeople, who can</p> <p>16 go out and sell directly. I was trying</p> <p>17 to find out and figure out how he was</p> <p>18 going to create incremental revenue with</p> <p>19 me without any staff.</p> <p>20 Q. And what did he say to you about that?</p> <p>21 A. That he would bring staff on to help</p> <p>22 support the sales force as the</p> <p>23 relationship grew.</p> <p>24 Q. And what did you understand him to mean</p>
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<p>1 A. I couldn't say if it was at that visit or</p> <p>2 not, no.</p> <p>3 Q. Sometime early in the relationship did</p> <p>4 Mr. Bevington tell you that he was also</p> <p>5 going to hire personnel to support the</p> <p>6 MAXIMO web hosting?</p> <p>7 A. He did tell me he was going to hire a</p> <p>8 salesperson.</p> <p>9 Q. What about other personnel for technical</p> <p>10 support, and other administrative support</p> <p>11 necessary to put the web hosting on</p> <p>12 MAXIMO in place?</p> <p>13 A. I don't believe I would have discussed</p> <p>14 that. I was only concerned about how</p> <p>15 they were going to support the sales</p> <p>16 force in selling the services or the</p> <p>17 software. The technical aspect was</p> <p>18 somebody else's business.</p> <p>19 Q. When you made that first trip to Atlanta,</p> <p>20 were there any discussions about how M2</p> <p>21 was going to support the sales effort on</p> <p>22 the hosting side?</p> <p>23 A. Sure. I had a definite concern.</p> <p>24 Q. And you and Mr. Bevington discussed that</p>	<p>1 when he said he would bring staff on to</p> <p>2 help support, and when you say "the sales</p> <p>3 force", you mean MRO's sales force?</p> <p>4 A. Correct.</p> <p>5 Q. What did you understand him to mean when</p> <p>6 he said he was going to do that?</p> <p>7 A. That he would hire people to find</p> <p>8 opportunities as well as to support any</p> <p>9 opportunities our sales force found that</p> <p>10 would require them to come in and talk</p> <p>11 about their services, because incremental</p> <p>12 to me means something that we can't do on</p> <p>13 our own.</p> <p>14 Q. And there were then two possible ways</p> <p>15 that a web hosting sale might happen.</p> <p>16 Either your sales force would pick it up</p> <p>17 and direct it to M2, or M2's to-be-added</p> <p>18 staff would go out and find it, and do it</p> <p>19 on its own; is that fair to say?</p> <p>20 A. Correct.</p> <p>21 Q. Were there any other ways discussed about</p> <p>22 how leads might be developed and divided</p> <p>23 out?</p> <p>24 A. I don't know of any other.</p>

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<p>1 that?</p> <p>2 A. No.</p> <p>3 Q. What exactly did he tell you that M2 was</p> <p>4 looking for?</p> <p>5 A. He told me that M2 was looking for more</p> <p>6 leads from the sales force.</p> <p>7 Q. And did he have any suggestion or</p> <p>8 recommendation as to what MRO ought to do</p> <p>9 in light of this request that was coming</p> <p>10 out of M2?</p> <p>11 A. You're asking --</p> <p>12 Q. Did Ray have any suggestions about what</p> <p>13 to do about the fact that M2 was looking</p> <p>14 for this level of support?</p> <p>15 A. He may have. Again, our conversations</p> <p>16 went a lot like, Why do I keep spinning</p> <p>17 cycles on this? I don't even think we</p> <p>18 generated \$100,000 in its entire period</p> <p>19 of time we're talking about. During</p> <p>20 that period of time I was responsible</p> <p>21 for about \$90 million in business; so</p> <p>22 I'm trying to -- I usually would push</p> <p>23 back very strongly every time the subject</p> <p>24 was brought up of why we need to do all</p>	<p>1 don't know why he expects so much out</p> <p>2 of that arrangement.</p> <p>3 Q. Did Miciek ever tell you that Mr.</p> <p>4 Bevington was looking for a roll out</p> <p>5 to North American sales that contained</p> <p>6 a certain set of steps?</p> <p>7 A. He may have, but I would have been</p> <p>8 resistant to that. North American sales,</p> <p>9 I had -- specifically one of my regional</p> <p>10 managers was totally opposed to that. I</p> <p>11 probably would have told him that's not</p> <p>12 very practical.</p> <p>13 Q. Which regional manager was that?</p> <p>14 A. Ted Davis.</p> <p>15 Q. Why?</p> <p>16 A. He felt it was counterproductive to</p> <p>17 direct sales within his market, which</p> <p>18 was the utilities marketplace.</p> <p>19 Q. Did you have any discussions with Mr.</p> <p>20 Bevington, prior to June of 2003, about</p> <p>21 his request that MRO undertake some type</p> <p>22 of specific roll out to North American</p> <p>23 sales?</p> <p>24 A. I believe I did, yes.</p>
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<p>1 this. It's not really worth it. He</p> <p>2 would indicate that they expected more.</p> <p>3 We still needed a tool, and he wanted</p> <p>4 to try to work with them. I would say,</p> <p>5 Okay, then do something. What are we</p> <p>6 going to do?</p> <p>7 Q. I don't know.</p> <p>8 A. No. That was rhetoric to say to Ray.</p> <p>9 Q. Did Ray have any ideas?</p> <p>10 A. I'm sure Ray had some ideas about working</p> <p>11 with the sales force. Again, it was</p> <p>12 limited to -- as far as I was concerned,</p> <p>13 this was a mid-market. We had five</p> <p>14 salespeople working in a mid-market,</p> <p>15 responsible for maybe a million dollars</p> <p>16 worth of revenue. They were needed</p> <p>17 in rare instances where one of our</p> <p>18 competitors made an offer that we</p> <p>19 couldn't provide. So it was not -- you</p> <p>20 know, I said, Work with him and do what</p> <p>21 you can. But, I mean, what are we going</p> <p>22 to do? Tell the salespeople, your sales</p> <p>23 guys, and, you know, let them know what</p> <p>24 we're doing, but I don't expect -- I</p>	<p>1 Q. Do you remember when you had the</p> <p>2 discussion with him?</p> <p>3 A. No.</p> <p>4 Q. Can you tell me, to the best of your</p> <p>5 memory, what you said to him, and what</p> <p>6 he said to you?</p> <p>7 A. Well, I know he wanted to do a roll out</p> <p>8 to the entire sales force. I remember</p> <p>9 trying to be diplomatic respective to how</p> <p>10 much efforts and time we would spend on</p> <p>11 this effort, keeping in mind that I was</p> <p>12 always concerned about the amount of</p> <p>13 time and energy to be spent, and</p> <p>14 also deflecting the attention of our</p> <p>15 salespeople into something that wasn't</p> <p>16 perceived as something that we would</p> <p>17 get a large market out of. I probably</p> <p>18 indicated that we might consider it if</p> <p>19 we had the right parameters, and we get a</p> <p>20 compensation plan together, and that kind</p> <p>21 of thing. In my attempt to try to be</p> <p>22 diplomatic and say, "We might do it if</p> <p>23 we get the right circumstances in place."</p> <p>24 Q. At the time that you said that to Mr.</p>

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ROBERT K. PARKER 11/17/05

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1 money in it to make good business sense.
 2 Q. Can you think of any other terms that
 3 you're aware of that were different?
 4 A. No.
 5 Q. Now, the increase in the percentage
 6 of revenue, whose idea was that?
 7 A. Mine.
 8 Q. And was that simply to address the fact
 9 that there wasn't enough -- strike that.
 10 Under the 2000 agreement, and I'll
 11 represent for you that the percentage
 12 that MRO was entitled to was 20 percent,
 13 and then under the 2002 agreement it rose
 14 to 50 percent.
 15 A. Uh-huh.
 16 Q. Was that increase simply so that MRO
 17 could try to get more incremental revenue
 18 out of the deal, or was that increase
 19 necessary to incentivize MRO sales force
 20 in selling the service?
 21 A. It didn't make any sense for 20 percent.
 22 There just wasn't any revenue in it.
 23 That's why I said if we don't make it
 24 more, I'm not going to deal with it

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1 anymore.
 2 Q. Did you ever say to Rick Bevington, If
 3 you want us to roll out to North American
 4 sales, we have to have 50 percent instead
 5 of 20 percent?
 6 A. No, I don't remember saying that. We
 7 did have -- those are two disjointed
 8 conversations. In other words, we did
 9 have a conversation about we have to
 10 increase the sales to 50 percent, and in
 11 an entirely different conversation we
 12 may have discussed that we need to do
 13 something with the sales program, but
 14 they wouldn't be joined together.
 15 Q. So do you recall any conversations with
 16 Rick Bevington where he said, We can do a
 17 new agreement with a 50 percent payout to
 18 MRO, but I have to have a more aggressive
 19 roll out to North American sales?
 20 A. Not to me, no.
 21 Q. Let me just discuss a couple of other
 22 provisions. I'll represent to you that
 23 the 2002 agreement has a clause in there
 24 that allows MRO to terminate at its

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1 convenience. Were you involved in the
 2 negotiation of that?
 3 A. That's standard language in all of our
 4 partner agreements.
 5 Q. And do you believe then that that
 6 language would have been included in the
 7 2000 agreement?
 8 A. No, I'm talking about now. At that time
 9 we didn't have really an alliance
 10 program. Now we do; so it's a standard
 11 practice in our new agreements.
 12 Q. So that came in after the 2000 agreement
 13 was signed?
 14 A. Right.
 15 Q. After the 2002 agreement was signed
 16 in November of 2002, did you have any
 17 discussions with Rick Bevington in which
 18 he expressed his belief that MRO had
 19 committed to roll out M2 to North
 20 American sales in a way that it had not
 21 done prior to that time?
 22 A. You use the word "roll out". A partner
 23 relationship of this size, I never would
 24 perceive a roll out. Again, standard you

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1 send out an e-mail. Even in our program
 2 internally all we sent out is an e-mail.
 3 That's why I said roll out is a relative
 4 term. To me a roll out would be just
 5 informing our team of the existence of
 6 the partner, and what the partner did.
 7 We have plenty of examples of that with
 8 partners that we actually do more with.
 9 Q. And did Mr. Bevington ever communicate
 10 to you, after signing the 2002 agreement,
 11 that he believed that MRO had agreed to
 12 do anything specific over and above the
 13 e-mail it had already sent out to North
 14 American sales to promote M2 internally?
 15 A. I believe that Mr. Bevington felt that we
 16 should do more. I don't believe he ever
 17 told me that that was an understanding
 18 of the agreement. It was just, as a
 19 businessman, he wanted to see more take
 20 place.
 21 Q. I just want to understand the source of
 22 your belief that Mr. Bevington felt that
 23 way. Did he say something to you? Did
 24 Miciek report that to you?

EXHIBIT

C

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RAYMOND MICIEK, JR.

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Page 1

STATE OF MASSACHUSETTS
SOUTHERN DISTRICT
DISTRICT OF MASSACHUSETTS

.....
M. RESNICK, JR.,
Plaintiff,
vs.
.....
MR. SOFTWARE, INC.,
Defendant.
.....

TESTIMONY OF RAYMOND MICIEK, JR., a witness
called in behalf of the Plaintiff, taken pursuant to
Notice under the applicable provisions of the Federal
Rules of Civil Procedure, before Barbara J. Simon, a
Professional Shorthand Reporter and Notary Public, in
and for the Commonwealth of Massachusetts, at the
office of Gesmer Updegrave, 40 Broad Street, Boston,
Massachusetts, on Wednesday, November 30, 2005,
commencing at 10:15 a.m.

SHEA COURT REPORTING SERVICES
(617) 227-3097

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1 INDEX

2 WITNESS DIRECT CROSS REDIRECT RECROSS

3 RAYMOND MICIEK, JR.

4 (By Mr. Resnick) 4

5

6 EXHIBITS

7 NO.	DESCRIPTION	PAGE
8 110	e-mail	121
9 111	e-mail	127
10 112	e-mail	131
11 113,114	e-mail	136
12 115	e-mail	140
13 116	e-mail	142
14 117	e-mail	144
15 118	e-mail	147
16 119	e-mail	149
17 120	e-mail	151
18 121	e-mail	152
19 122	e-mail	152
20 123	e-mail	155
21		
22	(The exhibits were retained by Attorney Resnick.)	
23		
24		

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1 APPEARANCES

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13 Counsel for the Defendant

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1 STIPULATIONS

2

3 It is hereby stipulated and agreed by and
4 between counsel for the respective parties that all
5 objections, except objections as to the form of the
6 question, and all motions to strike, shall be
7 reserved to the time of trial.

8 It is further stipulated and agreed that the
9 deponent shall have thirty (30) days in which to read
10 and sign the transcript, under the pains and
11 penalties of perjury, after which time it shall be
12 deemed to have been signed, and that the
13 certification, filing and sealing of the deposition
14 transcript are waived.

15

16 RAYMOND MICIEK, JR., first having been
17 satisfactorily identified and duly sworn, on oath,
18 deposes and says as follows:

19

20 DIRECT EXAMINATION

21

22 BY MR. RESNICK:

23 Q Good morning, Mr. Miciek.

24 A. Good morning.

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RAYMOND MICIEK, JR.

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1 a company?

2 A. The only investigation that I did was with
3 discussions with Milton Bevington.

4 Q. Did you visit M2's facility?

5 A. I've been to their facilities. Again, the time frame
6 of when I went there I can't recall.

7 Q. Do you know whether Bob Parker visited the M2
8 facility in Georgia?

9 A. I do.

10 Q. Did he visit that facility because you had suggested
11 M2 as a possible implementation services provider?

12 A. No.

13 Q. Do you have any understanding as to why Mr. Parker
14 chose to visit M2?

15 A. Because we were looking at them at the time Bob
16 visited them as a hosting partner.

17 Q. So after you received the lukewarm response from the
18 Services group, did you do anything else to try to
19 get a relationship between MRO and M2?

20 A. Specifically for the implementation services?

21 Q. Yes.

22 A. I would say that I would work with the Services
23 manager, present them potential opportunities where I
24 thought they would be a good fit. I don't recall the

1 company names.

2 Q. At some point, did you stop using M2 as an
3 implementation services provider and begin discussing
4 the possibility of M2 hosting MAXIMO?

5 A. No, because they're independent offerings.

6 Q. So from 1999 through 2003, is it your recollection
7 that M2 was providing implementation services for
8 certain customers in the mid-tier, separate and apart
9 from any MAXIMO hosting services?

10 A. Yes.

11 Q. Do you remember what year you began speaking with M
12 about the possibility of hosting MAXIMO?

13 A. Not specifically.

14 Q. Okay. Do you recall anything about preliminary
15 discussions with Rick Bevington or anyone else at M2
16 about the possibility of hosting MAXIMO?

17 A. Yes.

18 Q. Can you tell me what you remember about those initial
19 discussions with M2?

20 A. It's tough because, again, there's a lot of
21 conversations that get jumbled up. I can't recall
22 specific commentary on that.

23 Q. How about just general understanding that you
24 obtained from those conversations?

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1 specifics on those.

2 Q. So do you mean that after getting this lukewarm
3 response, if you got some feedback from Sales that
4 "Here's a place where we could use an implementation
5 provider like M2," you would contact the manager of
6 the Services group and say, "I think these guys might
7 work there?"

8 A. That's correct.

9 Q. Did M2 actually do any implementation services work
10 for anyone that you suggested to the Services manager
11 that they might be a good fit for, in this period of
12 time?

13 A. They did.

14 Q. Do you remember who?

15 A. CA. Computer Associates comes to mind.

16 Q. And do you recall how that worked out?

17 A. I do; not well.

18 Q. Why didn't it work out well?

19 A. I would say partly because the customer was not the
20 easiest to work with.

21 Q. Do you know if M2 did any other implementation work
22 at this point, other than for Computer Associates,
23 that you were aware of?

24 A. I'm sure they did, but I don't have the specific

1 A. The general understanding is the model which they
2 were proposing which is a rental model or an ASP
3 model where they merely hosted the software; they
4 didn't purchase it.

5 The client brought the software to them and they
6 provided the hardware infrastructure for the
7 customers to access them.

8 Q. How does that differ from the rental model?

9 A. The rental model would be one in which M2 purchases
10 or rents the software out to the customer. The
11 customer pays a fee both for the hardware
12 infrastructure as well as for the software.

13 Q. But the hardware infrastructure and software would
14 still be on M2's central software?

15 A. That's correct.

16 Q. What was your initial response when Mr. Bevington
17 began discussing these two models?

18 A. Positive.

19 Q. Why was it positive?

20 A. We had a competitor at the time that was beginning to
21 offer hosting services.

22 It seemed like a good fit, that we were running
23 into that competitor, and they were offering hosting
24 We didn't really offer hosting

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1 We had to find some sort of fit. Rather than
 2 turn the clients over to that competitor, we wanted
 3 to fight and do our best to win the deal.
 4 Q. Who was the competitor?
 5 A. Datastream.
 6 Q. At some point, did you begin the process of
 7 presenting M2 to either the Services group or the
 8 Alliances group as a possible hosting partner?
 9 A. Again, I was not the one that introduced them, from
 10 what I recall. So my answer would be no.
 11 Q. Who did?
 12 A. I don't recall who it was.
 13 Q. How did you first begin interacting with M2 as a
 14 possible applications hosting provider for MAXIMO at
 15 all, if you remember?
 16 A. My best recollection is that I had been talking to
 17 Rick about implementation services.
 18 There was an agreement signed somewhere in
 19 between the end of '99 to the middle of 2000 that
 20 said that they were going to host, and then we
 21 started discussions about possible opportunities.
 22 It was not uncommon once a partner was signed
 23 that the Alliances team would present that and say
 24 here's an option for you.

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1 Q. Let me then ask you, did the Alliances team at some
 2 point present M2 to you as a hosting option for the
 3 mid-tier?
 4 A. I'm sure they did.
 5 Q. Now, let's talk about the agreement that was signed,
 6 and I'll represent for the record that it was signed
 7 in March of 2000 between M2 and MRO.
 8 Were you involved in the negotiation of that
 9 agreement in any way?
 10 A. Not with the negotiation.
 11 Q. Were you involved in any discussions with M2
 12 regarding the possibility of signing such an
 13 agreement with MRO?
 14 A. Can you repeat the question?
 15 Q. Did you have any discussions with Rick Bevington or
 16 anyone else at M2 about the possibility that they
 17 would sign an agreement with MRO which would include
 18 M2 as a possible hosting partner?
 19 A. It's possible that I had those conversations with
 20 Rick prior to the agreement, as it was part of our
 21 nature of talking about services. He may have
 22 mentioned it prior to the agreement.
 23 Q. What is your understanding of how it was that this
 24 agreement got negotiated between the two parties?

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1 Do you have any understanding as to who
 2 interacted with M2 to get that agreement finalized
 3 and signed?
 4 A. I don't.
 5 Q. Did anyone at MRO tell you that they were in the
 6 process of negotiating an agreement with M2 which
 7 would have meant M2 web hosting MAXIMO in 2000?
 8 A. I can't pinpoint a specific person or time frame. I
 9 was aware of that agreement; it was coming.
 10 Again, whether that conversation came from Rick
 11 Bevington or internal, I can't recall specifically.
 12 Q. But you have a general memory of becoming aware that
 13 such an agreement would be in place?
 14 A. That's a fair statement.
 15 Q. Did you suggest to MRO at any time that MRO sign the
 16 agreement with M2 in March of 2000, permitting M2 to
 17 web host MAXIMO?
 18 A. No, not to my recollection.
 19 Q. And so I'm clear, in 2000 you were working with M2 as
 20 an implementation services provider?
 21 A. Yes.
 22 Q. At some point, you just became aware that MRO had
 23 signed a contract with M2 for application posting?
 24 A. That's correct, to the best of my recollection.

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1 Q. Do you know whether anyone else at MRO was working
 2 with M2 during that same time frame, other than you
 3 and your group?
 4 A. Only the Alliances people.
 5 Q. Who in Alliances would have been working with M2 at
 6 that time?
 7 A. At that time, it was either Jason Casper or Joe
 8 Leone.
 9 Q. Did either Mr. Casper or Mr. Leone tell you that they
 10 were negotiating an agreement with M2 in 2000
 11 regarding web hosting?
 12 A. It's very possible that they did.
 13 Q. You just don't have any specific memory?
 14 A. That's correct.
 15 Q. So were you surprised when you learned that MRO and
 16 M2 had executed an agreement for web hosting?
 17 A. I can't recall whether I was surprised.
 18 Q. Had anyone asked you whether that was a service that
 19 you needed in the mid-tier?
 20 A. Again, there were many conversations that took place
 21 It's very possible that that occurred.
 22 Q. I understand it's possible I need to know whether
 23 you remember having any such conversations.
 24 A. I don't remember.

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<p>1 for those leads that it provided?</p> <p>2 A. Sure.</p> <p>3 Q. And what was your conclusion about how that would be</p> <p>4 handled?</p> <p>5 A. There never was a conclusion. We never could come to</p> <p>6 grips on how they would pay. That was a very</p> <p>7 challenging part from when we signed the first</p> <p>8 agreement to when we signed the second agreement.</p> <p>9 Q. Okay, and is it fair to say that you understood that</p> <p>10 the sales force would be less interested in promoting</p> <p>11 a service where there was no clear understanding of</p> <p>12 how they got paid as opposed to promoting a service</p> <p>13 where there was a clear commission structure in</p> <p>14 place?</p> <p>15 A. Yes.</p> <p>16 Q. Why then did your sales group proceed with directing</p> <p>17 hosting leads to M2 before the sales-commission issue</p> <p>18 was figured out?</p> <p>19 A. One of the reasons was that the type of leads that we</p> <p>20 were passing over to Rick were ones that we probably</p> <p>21 would not pursue ourselves anyway, but it's important</p> <p>22 to keep in mind there were not a huge amount of leads</p> <p>23 that were coming in. It was not like hundreds of</p> <p>24 leads that we said what do we do with these.</p>	<p>1 Q. And in this time frame between March of 2000 and</p> <p>2 November of 2002, was M2 also in the mid-tier trying</p> <p>3 to sell its service directly to potential prospects?</p> <p>4 A. That was my understanding. They had lots of</p> <p>5 relationships in the industry, and if they came</p> <p>6 across an opportunity that they uncovered themselves,</p> <p>7 they would pursue it.</p> <p>8 Q. Did they uncover any opportunities that ultimately</p> <p>9 resulted in software sales of MAXIMO which they</p> <p>10 provided back to MRO?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know how many?</p> <p>13 A. No.</p> <p>14 Q. Did Mr. Bevington, in any of his discussions with you</p> <p>15 about more aggressively promoting M2's MAXIMO web</p> <p>16 hosting capabilities, indicate to you that he</p> <p>17 believed that MRO had an obligation to aggressively</p> <p>18 promote that service in the marketplace?</p> <p>19 A. In conversations, Rick would often say that we were</p> <p>20 the sales channel, but that's not something that I</p> <p>21 necessarily agreed with.</p> <p>22 Q. Did you ever tell him in any of those conversations</p> <p>23 that you didn't agree with his assertion that MRO was</p> <p>24 the sales channel?</p>
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<p>1 They would trickle in, in ones and twos, based</p> <p>2 on market demand. We were seeing some interest, but</p> <p>3 it was not huge.</p> <p>4 Q. Was Rick Bevington talking to you about being more</p> <p>5 aggressively selling M2's capabilities in the</p> <p>6 marketplace?</p> <p>7 A. Sure. Rick always talked about being more aggressive</p> <p>8 and selling his services.</p> <p>9 Q. Do you have any specific recollection of any specific</p> <p>10 conversation with him on that point?</p> <p>11 A. Not specifically. It was a continual thing.</p> <p>12 Q. Generally, what was your response when he asked you</p> <p>13 to have your team promote his services more</p> <p>14 aggressively?</p> <p>15 A. Polite, placating would be the right term. Rick</p> <p>16 represented a very small piece. The potential of</p> <p>17 what he could produce was very small to me. I had</p> <p>18 quotas to meet</p> <p>19 I would agree, "Rick, we'll do whatever we can.</p> <p>20 When the time and the market dictates to promote it,</p> <p>21 we'll promote it."</p> <p>22 Q. Do you remember anything specific that you said to</p> <p>23 Mr. Bevington about we'll do whatever we can?</p> <p>24 A. Not specifically.</p>	<p>1 A. To the best of my recollection, I did.</p> <p>2 Q. Do you remember when, specifically, you told him</p> <p>3 that?</p> <p>4 A. No, I don't.</p> <p>5 Q. Do you remember what his reaction was when you told</p> <p>6 him that?</p> <p>7 A. No, I don't.</p> <p>8 Q. Did he continue after you had this discussion,</p> <p>9 whenever it was, to assert that MRO had an obligation</p> <p>10 to actively promote M2 in the marketplace?</p> <p>11 A. I would say that's correct.</p> <p>12 Q. When he continued to make those assertions, did you</p> <p>13 ever say to him words to the effect of, "Look, I</p> <p>14 don't agree with your claim that we're the sales</p> <p>15 channel and you're the fulfillment channel"?</p> <p>16 A. At some point during that time between 2000 and 2002,</p> <p>17 my recollection is I did have that conversation with</p> <p>18 him.</p> <p>19 Q. Do you remember anything specific about that</p> <p>20 conversation?</p> <p>21 A. No, I don't.</p> <p>22 Q. Do you remember what his reaction was when you told</p> <p>23 it to him the second time?</p> <p>24 A. Rick was one that you could tell him something, and</p>

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1 host for supplier catalogs and things like that.

2 So we were gaining expertise there. So the
3 technology would be better for hosting a better scale
4 process than we had initially with the Nstar
5 agreement.

6 So in general, conversations were always around
7 when Release 5 comes out, that's when we'll jump back
8 into this game.

9 Q. Did you participate in some of those conversations?

10 A. From a periphery.

11 Q. At some point, did you ever inform Mr. Bevington of
12 the substance of those conversations?

13 By that I mean, in particular, the idea that
14 once MAXIMO 5 came out, MRO would revisit the hosting
15 issue in some way.

16 A. Sure, we did.

17 Q. Do you have any specific memory as to what you said
18 to Mr. Bevington in those conversations where you
19 talked about MAXIMO 5 is going to come out and that's
20 an Internet-based architect product?

21 A. No, not specifically.

22 Q. Do you have any general recollection as to what was
23 said in those conversations, either you to him or him
24 to you?

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1 A. Generally, the conversations were surrounded, "Rick,
2 you know we're going to be doing our own hosting,"
3 and Rick would say, "Why would you want to do that?"
4 You have us." I would say, "The architecture allows
5 for it."

6 They were just general conversations. We had
7 many, many conversations.

8 Q. Can you tell me anything more that you remember
9 generally about the content of those conversations,
10 or have you told me everything you can remember?

11 A. Everything I can remember

12 Q. Do you remember what you said when Mr. Bevington
13 said, "Why would you do that? You have us"?

14 A. My conversations were generally supportive of Rick,
15 saying, "Look, you offer a different niche than what
16 we would. There's things that I think that you can
17 do that we could still leverage you for. So it's not
18 that you go away. You're kind of like another
19 offering."

20 Q. Did you ever discuss with him specifically what the
21 different offering that M2 might provide in that
22 event would be?

23 A. The offering was no different than what he had been
24 previously offering.

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1 Q. Implementation services?

2 A. No, a complete, quick solution for smaller customers.

3 Q. To get up and running in a hosting environment?

4 A. That's right.

5 Q. In your dealings with Mr. Bevington, did he ever talk
6 to you about something known as Quick Start for
7 MAXIMO?

8 A. Yes.

9 Q. What is your understanding of what Quick Start was?

10 A. That's the implementation services that we discussed
11 earlier. That was really the foundation of our
12 original conversations with him was around the Quick
13 Start package back in 1999, pre '99, that it's a
14 prepackaged services to get someone up and running.

15 My view of Quick Start was always more from a
16 customer buys the software, we package that with
17 Quick Start which contains all the information that
18 helps the customer get up and running faster, and
19 then it gets implemented by M2.

20 Q. Was Quick Start in existence before M2 started
21 hosting MAXIMO?

22 A. I believe it was, but I can't remember if they had
23 planned it at that time.

24 Q. Is it your understanding that Quick Start or the

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1 components of Quick Start were customized in some way
2 for MAXIMO to make it a MAXIMO-specific offering in
3 the market?

4 A. My understanding was that they could apply it to any
5 package.

6 Q. Did MRO promote Quick Start for MAXIMO as a service
7 offering before it entered into its relationship with
8 M2, to the best of your knowledge?

9 A. I can't recall.

10 Q. And after it entered into its relationship with M2,

11 did MRO promote Quick Start for MAXIMO through its
12 sales force as an offering?

13 A. Through my sales force, it was an alternative. It
14 was not necessarily promoted. Again, based on market
15 needs, customer requirements, we would engage Rick if
16 it made sense.

17 Q. So if you identified a prospect where it might be
18 applicable, then it would be an offering that you
19 presented to the prospect?

20 A. Right

21 Q. Do you remember anything in these discussions about
22 MRO web hosting MAXIMO after MAXIMO 5 came out where
23 Rick indicated that that would be inconsistent in
24 some way of his understanding of the relationship

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1 A. No.

2 Q. Do you know whether anyone else at MRO ever

3 investigated the way in which M2 delivered rapid

4 implementation services for MAXIMO in connection with

5 MRO's preparation to web host MAXIMO?

6 A. No.

7 Q. This conversation with Katie Doyle, do you remember

8 when it occurred?

9 A. No, I don't.

10 Q. Do you remember the year it occurred?

11 A. I really don't.

12 Q. Did she say anything to you about the time frame

13 within which MRO's internally hosted MAXIMO offering

14 would be presented to Sales?

15 A. Not that I recall.

16 Q. Did you have a general understanding at the time you

17 spoke to Katie Doyle about how soon it would be

18 before that offering would be available?

19 A. That would be an assumption on my part. I don't

20 recall.

21 (Lunch recess.)

22

23

24

1 Q. Do you remember, approximately, the time when you

2 first began discussing that with Mr. Bevington?

3 A. Sometime in 2001 to throughout 2002, to until it was

4 signed.

5 Q. What caused you to begin discussing with

6 Mr. Bevington the signing of the new agreement

7 between M2 and MRO?

8 A. My recollection is that we wanted to reconstruct the

9 old contract.

10 Q. Why?

11 A. My recollection was that it was going to expire.

12 Q. Who at MRO, if anyone, told you to discuss the

13 execution of a new agreement with Mr. Bevington?

14 A. No one specifically told me to do the new agreement.

15 It was one of those evolutionary kinds of things

16 where I thought the contract was expiring. Rick

17 appeared motivated to redo the contract.

18 It had come up in several conversations, both

19 with myself and Rick, and from what I recall, others,

20 like Bob Parker, and discussions, and with Nancy

21 Gilroy who was our VP of Contracts that it needed to

22 be redone, which is not uncommon for us on many of

23 our contracts with our partners.

24 Q. And what did Mr. Bevington say or do to lead you to

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Page 88

1 AFTERNOON SESSION

2

3 Q. I'd like to show you what we previously marked in

4 this case as Exhibit Number 2 and ask you if you have

5 ever seen that document before.

6 A. I have.

7 Q. Does that document appear to you to be the second

8 agreement signed between MRO and M2?

9 A. It does.

10 Q. In the signature block -- I think it's in the

11 front -- it says "November 4, 2002."

12 A. Yes, it does.

13 Q. Is it your recollection that the second agreement

14 was, in fact, signed in November 2002?

15 A. Yes.

16 Q. Did you have any discussions with Mr. Bevington or

17 anyone else at M2 regarding the negotiation of the

18 second agreement?

19 A. I did.

20 Q. Do you remember whether you had those discussions

21 with Mr. Bevington or someone else?

22 A. At M2?

23 Q. At M2?

24 A. It was with Rick Bevington.

1 believe that he was motivated to redo the contract?

2 A. I can't recall.

3 Q. What did Mr. Parker tell you about the need to

4 execute a new contract?

5 A. I don't recall any specifics.

6 Q. What about Ms. Gilroy? Did she say anything to you

7 about the need to negotiate a new contract?

8 A. I don't recall the specific nature of that.

9 Q. Do you recall the general nature of your discussions

10 either with Mr. Parker or Ms. Gilroy?

11 A. The general discussions around were that the original

12 contract was fairly loose and not in line with our

13 current contracts that we have with our partners, and

14 typically, we will go back to our older contracts and

15 redo them.

16 Q. And was there some type of established template or

17 model contract in 2002 that MRO was trying to get in

18 place with its partners?

19 A. I don't have the expertise to testify to that.

20 Q. So when you were told that the old M2 contract was

21 not in line with the current MRO contract with its

22 partners, did you have any understanding of what that

23 meant?

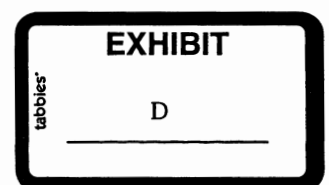
24 A. Not particularly.

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<p>1 person making sure that this agreement supported your</p> <p>2 needs, you were primarily concerned with territory?</p> <p>3 A. Primarily</p> <p>4 Q. Can you recall anything else in there that you might</p> <p>5 have been concerned with, other than territory?</p> <p>6 MR. GLSMER: Can he look at the document to</p> <p>7 refresh his memory?</p> <p>8 MR. RESNICK: Sure. Take your time.</p> <p>9 (Witness reviews document.)</p> <p>10 A. The fees were of interest to me simply because that</p> <p>11 was how I would get revenue distributed to my team,</p> <p>12 the products that he could introduce into the market</p> <p>13 and host, and referral fees.</p> <p>14 Lead registration was an issue because I wanted</p> <p>15 to make sure that there was no channel conflict that</p> <p>16 he was trying to get credit for an opportunity that</p> <p>17 we were already working.</p> <p>18 Q. Do you recall Mr. Bevington trying to talk to you</p> <p>19 specifically about any contract terms that Nancy</p> <p>20 Gilroy or anyone else at MRO was asking him to</p> <p>21 include in the document?</p> <p>22 A. Not terms to be included from our side, no.</p> <p>23 Q. Did you have an understanding of why MRO was seeking</p> <p>24 to increase the royalty percentage from twenty to</p>	<p>1 Q. And did you have any discussions with Mr. Bevington</p> <p>2 about we have a new contract and what would happen</p> <p>3 now that the new contract had been signed?</p> <p>4 A. I did not inform Rick. I don't think so. I don't</p> <p>5 think I was the first one to inform him that the</p> <p>6 contract had been signed. That probably came from</p> <p>7 Nancy</p> <p>8 Again, I'm not sure of the time frame, and we</p> <p>9 had many conversations about the contract itself and</p> <p>10 reiterations in regards to specific next steps, what</p> <p>11 happens now, when can we do a web cast for the</p> <p>12 product.</p> <p>13 Q. Let's talk about the discussions about when to do a</p> <p>14 web cast.</p> <p>15 Do you have any memory of any specific</p> <p>16 conversations with Mr. Bevington after the 2002</p> <p>17 agreement was signed about when to do the web cast?</p> <p>18 A. Not specific conversations, no.</p> <p>19 Q. Do you have a general recollection of discussing that</p> <p>20 topic with Mr. Bevington?</p> <p>21 A. Yes.</p> <p>22 Q. What do you generally recall about the substance of</p> <p>23 those discussions?</p> <p>24 A. Generally, it was, "Well, okay let's do a web cast."</p>
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<p>1 fifty percent in the agreement?</p> <p>2 A. I do.</p> <p>3 Q. What is your understanding as to why they were</p> <p>4 looking to do that?</p> <p>5 A. Two-fold. One, at twenty percent the revenue stream</p> <p>6 would be almost meaningless to us, and we needed to</p> <p>7 increase that so that it became more attractive for</p> <p>8 us to support the relationship.</p> <p>9 Two, we felt that it was necessary to recover</p> <p>10 the commission fees that would be paid out, and</p> <p>11 third, so that we could justify the rental</p> <p>12 relationship versus a direct purchase.</p> <p>13 Q. Do you recall looking at drafts of Exhibit 2 before</p> <p>14 the contract was actually signed, at any point in</p> <p>15 time?</p> <p>16 A. I do.</p> <p>17 Q. At some point, were you shown the final executed</p> <p>18 contract?</p> <p>19 A. I don't recall that I was.</p> <p>20 Q. Did anybody at MRO inform you that a new contract</p> <p>21 with M2 had been signed?</p> <p>22 A. Yes.</p> <p>23 Q. Who informed you of that?</p> <p>24 A. Nancy Gilroy</p>	<p>1 That's basically it. I was not even sure of the</p> <p>2 content of what the web cast would contain.</p> <p>3 One piece might be we did discuss commissions --</p> <p>4 how someone would get paid, but other than that,</p> <p>5 there was not much to introduce.</p> <p>6 The field had pretty much known about the</p> <p>7 offering. They knew about M2. So I was not sure</p> <p>8 about what the agenda would entail, other than</p> <p>9 commissions.</p> <p>10 Q. Did you tell Rick Bevington that MRO would do a web</p> <p>11 cast?</p> <p>12 A. I did say that we were working towards doing a web</p> <p>13 cast.</p> <p>14 Q. Was the time frame discussed?</p> <p>15 A. You know, in those situations we did discuss time</p> <p>16 frames. It seemed like it was always next week or</p> <p>17 next month because of schedules and getting marketing</p> <p>18 support and assistance to get that pushed out</p> <p>19 Q. All right. Where does Marketing come into this whole</p> <p>20 issue of doing a web cast?</p> <p>21 What types of role would Marketing have in</p> <p>22 getting that done?</p> <p>23 A. One, they would be the one that kind of publishes the</p> <p>24 event to the field.</p>

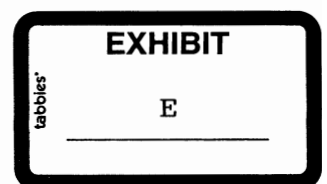


WILLIAM J. SAWYER - NOVEMBER 28, 2005

<p>1 VOL. I 2 Pp. 1 - 163 3 Exhibits 98 - 106</p> <p>4 UNITED STATES DISTRICT COURT 5 DISTRICT OF MASSACHUSETTS</p> <p>6 C.A. NO. 03-12589-GAO</p> <p>7 * * * * *</p> <p>8 M2 CONSULTING, INC., 9 Plaintiff</p> <p>10 VS.</p> <p>11 MRO SOFTWARE, INC., 12 Defendant</p> <p>13 * * * * *</p> <p>14</p> <p>15 Deposition of WILLIAM J. SAWYER, a witness 16 called by counsel for the Plaintiff, pursuant to the 17 applicable rules, before Kristin Ricci, a Certified 18 Shorthand Reporter and Notary Public in and for the 19 Commonwealth of Massachusetts, at the Law Offices of 20 Fee, Rosse & Lanz, P.C., 321 Boston Post Road, 21 Sudbury, Massachusetts, on Monday, November 28, 2005, 22 at 10:12 a.m.</p> <p>23 24</p>	<p>1 INDEX 3</p> <p>2</p> <p>3 Deposition of: Direct</p> <p>4 WILLIAM J. SAWYER 5 (by Mr. Resnick) 5</p> <p>6</p> <p>7</p> <p>8</p> <p>9 EXHIBITS</p> <p>10</p> <p>11 No. For Ident.</p> <p>12 98 The six-page document Bates Numbered 13 MRO 05327 through MRO 05332 14 containing an e-mail chain and 15 PowerPoint slides 119</p> <p>16</p> <p>17 99 The document Bates Numbered MRO 00872 18 containing an e-mail to Bob Parker 19 from Rick Bevington dated 1/14/03 122</p> <p>20</p> <p>21 100 The six-page document Bates Numbered 22 MRO 00754 through MRO 00759 23 containing an e-mail chain 123</p> <p>24</p> <p>25 101 The document Bates Numbered MRO 03521 26 containing an e-mail chain 136</p> <p>27</p> <p>28 102 The document Bates Numbered MRO 00995 29 containing an e-mail chain 144</p> <p>30</p> <p>31 103 The document Bates Numbered MRO 00980 32 containing a letter from Norman E. 33 Drapeau, Jr., to Rick Bevington dated 34 9/3/03 151</p>
<p>1 APPEARANCES: 2</p> <p>2</p> <p>3 MARK S. RESNICK, ESQUIRE 4 Fee, Rosse & Lanz, P.C. 5 321 Boston Post Road 6 Sudbury, Massachusetts 01776 7 On behalf of the Plaintiff</p> <p>8</p> <p>9 KURT BRATTEN, ESQUIRE 10 Gesmer Updegrove, LLP 11 40 Broad Street 12 Boston, Massachusetts 02109 13 On behalf of the Defendant</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 EXHIBITS 4</p> <p>2</p> <p>3 No. For Ident.</p> <p>4 104 The document Bates Numbered MRO 00753 5 containing two e-mails dated 5/28/03 6 with the subject: Per our discussion 153</p> <p>7</p> <p>8 105 The document Bates Numbered MRO 00772 9 containing an e-mail from Bill Sawyer 10 to Ray Miciek and Nancy Gilroy dated 11 7/7/03 155</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> <p>36</p> <p>37</p> <p>38</p> 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WILLIAM J. SAWYER - NOVEMBER 28, 2005

<p style="text-align: right;">33</p> <p>1 A I'm not sure that I understand.</p> <p>2 Q Sure. Was there anything special or</p> <p>3 anything in particular that MRO had to do</p> <p>4 before it could host MAXIMO through a</p> <p>5 Citrix server -- client server for a</p> <p>6 customer in 2000?</p> <p>7 A I don't believe there was anything special,</p> <p>8 other than the addition of Citrix to the</p> <p>9 equation.</p> <p>10 Q And what was required to add Citrix to the</p> <p>11 equation?</p> <p>12 A It was just another purchase. It was a</p> <p>13 third-party product that had to be bought</p> <p>14 and installed. And I believe it had to be</p> <p>15 installed on both our end and at each</p> <p>16 individual customer's end.</p> <p>17 Q And was installing Citrix so that it worked</p> <p>18 with MAXIMO -- did that require any</p> <p>19 alterations to the version of MAXIMO that</p> <p>20 was --</p> <p>21 A No. I'm pretty sure no.</p> <p>22 Q As part of Mr. Cisternelli's assignment,</p> <p>23 was he asked to look at the market for a</p> <p>24 MAXIMO hosted solution?</p>	<p style="text-align: right;">35</p> <p>1 Q Okay. And if MRO could not confirm that</p> <p>2 there would be a market for hosted MAXIMO,</p> <p>3 why then did it attempt to offer in 2000 a</p> <p>4 client server based hosted solution for</p> <p>5 MAXIMO?</p> <p>6 A I think there's a -- there's a belief that</p> <p>7 existed then and there's a belief that</p> <p>8 existed today that software as a service or</p> <p>9 software on demand -- they're called</p> <p>10 different things -- ultimately could change</p> <p>11 the way that software is delivered by</p> <p>12 companies.</p> <p>13 Q And how was that different in 2000?</p> <p>14 A In 2000, I think the same thing. I think</p> <p>15 if you went back to 2000, you would find</p> <p>16 that we as a management team believed that</p> <p>17 somewhere in the future, software as a</p> <p>18 service is going to be an important</p> <p>19 happening, and we should be a part of it.</p> <p>20 And I would say that we feel the same way</p> <p>21 today.</p> <p>22 Q And just so I'm clear, even though you</p> <p>23 weren't sure if there was a market for</p> <p>24 hosted MAXIMO, you decided to get into it</p>
<p style="text-align: right;">34</p> <p>1 A I think he was probably asked to look at</p> <p>2 the market for hosted solutions in general.</p> <p>3 Q And do you recall what he reported back</p> <p>4 about the market in 2000 for hosted</p> <p>5 solutions?</p> <p>6 A I think generally there's been a -- and,</p> <p>7 again, I don't know if I could say this</p> <p>8 specifically came from Paul or a sort of</p> <p>9 collective wisdom that applied to us. I</p> <p>10 think there's been a general belief amongst</p> <p>11 me and the rest of the management team that</p> <p>12 ultimately there would be a market for</p> <p>13 hosted offerings.</p> <p>14 And I don't think that we ever</p> <p>15 could confirm that that meant there</p> <p>16 could -- that there would be a market for</p> <p>17 specifically our product or our application</p> <p>18 in that environment, specifically</p> <p>19 maintenance management or the things that</p> <p>20 we do.</p> <p>21 So I guess what I'm saying is</p> <p>22 that we believe that some products would</p> <p>23 definitely be more successful in a hosted</p> <p>24 environment than ours.</p>	<p style="text-align: right;">36</p> <p>1 anyway in 2000?</p> <p>2 A Right.</p> <p>3 Q So you would be there if it became suddenly</p> <p>4 in demand?</p> <p>5 A That's correct.</p> <p>6 Q Okay. Who was responsible for getting</p> <p>7 NSTAR to host with MAXIMO in 2000?</p> <p>8 A You know, I don't know whether Paul did</p> <p>9 that directly or he worked with someone</p> <p>10 from sales. I don't recall, frankly, if</p> <p>11 NSTAR might have been a customer, and they</p> <p>12 were just looking for another -- I don't</p> <p>13 know the complete circumstances.</p> <p>14 Q Was it NSTAR nationwide, or was it a</p> <p>15 particular region?</p> <p>16 A I think it was NSTAR local to Boston.</p> <p>17 Q And --</p> <p>18 A And my guess, it would have been some small</p> <p>19 department within NSTAR in Boston that was</p> <p>20 looking for an application like ours.</p> <p>21 Q Do you know when NSTAR first began using</p> <p>22 the hosted application?</p> <p>23 A It was in the middle -- it was roughly June</p> <p>24 of 2000.</p>



Deposition of Kathleen M. Doyle

December 1, 2005

<p>1 Volume: 1 2 Pages: 1-140 3 Exhibits: 123-126</p> <p>4 UNITED STATES DISTRICT COURT 5 DISTRICT OF MASSACHUSETTS 6 C.A. No. 03-12589-GAO</p> <p>7 *****</p> <p>8 M2 CONSULTING, INC., 9 Plaintiff, 10 vs. 11 MRO SOFTWARE, INC., 12 Defendant.</p> <p>13 *****</p> <p>14 DEPOSITION of KATHLEEN M. DOYLE, a 15 witness called by counsel for the Plaintiff, 16 taken pursuant to Rule 30 of the Massachusetts 17 Rules of Civil Procedure before Alene M. 18 Jennette, Certified Shorthand Reporter and 19 Notary Public in and for the Commonwealth of 20 Massachusetts, at the offices of Gesmer 21 Updegrove, LLP, 40 Broad Street, Boston, 22 Massachusetts on Thursday, December 1, 2005, 23 commencing at 10:00 a.m. 24</p>	<p>1 INDEX 3</p> <p>2</p> <p>3 WITNESS: DIRECT CROSS</p> <p>4 KATHLEEN M. DOYLE</p> <p>5</p> <p>6 By Mr. Resnick 4</p> <p>7</p> <p>8</p> <p>9 EXHIBITS</p> <p>10</p> <table border="1"> <thead> <tr> <th>11 NO.</th> <th>12 DESCRIPTION</th> <th>13 PAGE</th> </tr> </thead> <tbody> <tr> <td>12 123</td> <td>14 E-mail dated 3/1/02</td> <td>15 99</td> </tr> <tr> <td>13 124</td> <td>14 E-mail dated 10/28/04</td> <td>15 99</td> </tr> <tr> <td>14 125</td> <td>14 E-mail dated 9/22/03</td> <td>15 99</td> </tr> <tr> <td>15 126</td> <td>14 E-mail dated 3/26/04</td> <td>15 99</td> </tr> </tbody> </table> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 Original Exhibits retained by Attorney Resnick.</p> <p>21 Copies attached hereto.</p> <p>22</p> <p>23</p> <p>24</p>	11 NO.	12 DESCRIPTION	13 PAGE	12 123	14 E-mail dated 3/1/02	15 99	13 124	14 E-mail dated 10/28/04	15 99	14 125	14 E-mail dated 9/22/03	15 99	15 126	14 E-mail dated 3/26/04	15 99
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15 126	14 E-mail dated 3/26/04	15 99														
<p>1 APPEARANCES: 2</p> <p>2</p> <p>3 FEE, ROSSE & LANZ, P.C. 4 By Mark S. Resnick, Esq. 5 321 Boston Post Road 6 Sudbury, Massachusetts 01776 7 On Behalf of the Plaintiff 8</p> <p>9 GESMER UPDEGROVE, LLP 10 By Kurt Bratten, Esq. 11 40 Broad Street 12 Boston, Massachusetts 02109 13 On Behalf of the Defendant 14 15 16 17 18 19 20 21 22 23 24</p>	<p>1 PROCEEDINGS 4</p> <p>2 STIPULATIONS</p> <p>3 It is hereby stipulated and agreed by 4 and between counsel for the respective parties 5 that the witness will read and sign the 6 deposition transcript. The notarization of the 7 signature and filing of the deposition may be 8 waived.</p> <p>9 It is further stipulated that all 10 objections, except as to the form of the 11 question, and motions to strike will be 12 reserved until the time of trial.</p> <p>13 KATHLEEN M. DOYLE, 14 a witness called for examination by counsel for 15 the Plaintiff, having been satisfactorily 16 identified by the production of her driver's 17 license and duly sworn by the Notary Public, 18 was examined and testified as follows: 19 DIRECT EXAMINATION 20 BY MR. RESNICK: 21 Q. Good morning. 22 A. Good morning. 23 Q. My name is Mark Resnick. I represent 24 the plaintiff in this case, M2 Consulting, Inc.</p>															

<p>45</p> <p>1 the competition who were already successful in</p> <p>2 that space.</p> <p>3 Q. Competition that were hosting?</p> <p>4 A. Mm-hmm, yes.</p> <p>5 Q. Who did you research?</p> <p>6 A. Datastream, INDUS. I looked at M2's</p> <p>7 model as much as I knew about it. And then I</p> <p>8 spoke with industry analysts who gave a general</p> <p>9 market overview.</p> <p>10 Q. Did you consider M2 to be competition</p> <p>11 for MRO at that point in time?</p> <p>12 A. No.</p> <p>13 Q. Datastream was a competitor?</p> <p>14 A. Yes.</p> <p>15 Q. And INDUS was a competitor?</p> <p>16 A. Yes.</p> <p>17 Q. Why was it that you didn't consider</p> <p>18 M2 to be a competitor?</p> <p>19 A. There was already a partnership in</p> <p>20 place.</p> <p>21 Q. And what did you -- when you spoke to</p> <p>22 industry analysts, what was your inquiry there?</p> <p>23 A. What the size, the potential size of</p> <p>24 the market might look like one year down the</p>	<p>47</p> <p>1 Q. Are they a research firm?</p> <p>2 A. Yes.</p> <p>3 Q. And was it your understanding that</p> <p>4 that had been prepared at MRO's request?</p> <p>5 A. No.</p> <p>6 Q. When you looked at the report, what</p> <p>7 was your understanding about why that report</p> <p>8 had been created?</p> <p>9 A. It was a general market study on EAM</p> <p>10 revenues and the form that those would take</p> <p>11 into the future.</p> <p>12 Q. Was this report prepared by Gartner</p> <p>13 for sale, or was it a publicly available</p> <p>14 report, you know, on their web site; you could</p> <p>15 go pull it if you wanted?</p> <p>16 A. It was for sale, but we were -- we</p> <p>17 had signed on with Gartner, so we were</p> <p>18 authorized to read the report.</p> <p>19 Q. Did you sign on with Gartner in</p> <p>20 connection with the hosting initiative or in</p> <p>21 some other more general way?</p> <p>22 A. Just generally.</p> <p>23 Q. Did you use this report, reference</p> <p>24 this report in connection with preparing your</p>
<p>46</p> <p>1 road, five years down the road, and what they</p> <p>2 felt the market would bear in the form of price</p> <p>3 points per seat.</p> <p>4 Q. How did you -- did MRO retain any</p> <p>5 analysts to study the industry and provide this</p> <p>6 information?</p> <p>7 A. I don't know.</p> <p>8 Q. Did you ever see any market analysis</p> <p>9 of potential hosting for facility management</p> <p>10 software that MRO had commissioned?</p> <p>11 A. I'm not sure I understand the</p> <p>12 question.</p> <p>13 Q. Did you ever see a report which was</p> <p>14 analysis of the potential market for hosting?</p> <p>15 A. Yes.</p> <p>16 Q. You saw it. Was that report prepared</p> <p>17 by someone from MRO?</p> <p>18 A. No.</p> <p>19 Q. Was it prepared by somebody outside?</p> <p>20 A. Yes.</p> <p>21 Q. Do you know who prepared it?</p> <p>22 A. Gartner.</p> <p>23 Q. Gartner?</p> <p>24 A. Mm-hmm.</p>	<p>48</p> <p>1 business plan?</p> <p>2 A. Yes, I did.</p> <p>3 Q. What did the report conclude about</p> <p>4 EAM revenues and the form they might take in</p> <p>5 the future?</p> <p>6 A. Generally, that hosting was the wave</p> <p>7 of the future.</p> <p>8 Q. And that there was significant</p> <p>9 potential growth in that space?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Was this Gartner report the</p> <p>12 sole piece of information you looked at in</p> <p>13 determining what the size of the market might</p> <p>14 look like down the road?</p> <p>15 A. No.</p> <p>16 Q. What else did you look at to make</p> <p>17 that analysis?</p> <p>18 A. I believe there was an ARC report, an</p> <p>19 IDC.</p> <p>20 Q. ARC and IDC, what do those stand for?</p> <p>21 A. Um...</p> <p>22 Q. Are they firms? Are they --</p> <p>23 A. Yes, they are firms. I don't know</p> <p>24 what the acronyms mean.</p>

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<p>49</p> <p>1 Q. Are they market analysis firms?</p> <p>2 A. Yes. I believe IDC is International</p> <p>3 Data Corporation. I'm not certain about that.</p> <p>4 Q. Okay. Were those reports, same</p> <p>5 thing, created by these firms and available for</p> <p>6 purchase?</p> <p>7 A. Yes.</p> <p>8 Q. Did MRO purchase those reports, or</p> <p>9 did you have -- had you already signed on with</p> <p>10 those guys, too?</p> <p>11 A. I believe MRO purchased those</p> <p>12 reports. I'm not certain.</p> <p>13 Q. Okay. And do you have any specific</p> <p>14 recollection of what these reports said?</p> <p>15 A. Similar. Um, I believe ARC went into</p> <p>16 defining the types of hosting scenarios that</p> <p>17 would be most prevalent, if I remember right.</p> <p>18 Q. Any specific memory of what the IDC</p> <p>19 report said?</p> <p>20 A. That one I consulted mostly for --</p> <p>21 actually, the IDC one may not have been a</p> <p>22 written report as much as it was a meeting we</p> <p>23 had with them where I inquired about price</p> <p>24 points.</p>	<p>51</p> <p>1 them?</p> <p>2 A. I believe one.</p> <p>3 Q. And how many MRO people?</p> <p>4 A. I believe there were three of us.</p> <p>5 Q. Do you remember who besides yourself?</p> <p>6 A. I believe there was myself, Rich</p> <p>7 Caplow, and Ed O'Brien.</p> <p>8 Q. Who is Ed O'Brien?</p> <p>9 A. He's no longer with MRO. He was the</p> <p>10 market research analyst within our product</p> <p>11 marketing group.</p> <p>12 Q. Do you remember anything about this</p> <p>13 meeting substantively, what was said, what IDC</p> <p>14 told you?</p> <p>15 A. What I came away with specifically</p> <p>16 was their recommendations that a price point of</p> <p>17 \$1,000 per seat would be acceptable in the</p> <p>18 market for hosting.</p> <p>19 Q. Okay. Did you have any further</p> <p>20 interaction with IDC in connection with</p> <p>21 preparing this business plan?</p> <p>22 A. No.</p> <p>23 Q. In addition to Gartner, ARC, and IDC,</p> <p>24 did you do anything else to determine the size</p>
<p>50</p> <p>1 Q. Do you recall when this meeting with</p> <p>2 IDC occurred?</p> <p>3 A. I don't.</p> <p>4 Q. How about the year?</p> <p>5 A. Approximately 2001.</p> <p>6 Q. Did it happen at their offices,</p> <p>7 Bedford, someplace else?</p> <p>8 A. In Bedford.</p> <p>9 Q. Was the purpose of the meeting</p> <p>10 exclusively to talk about analysis of the</p> <p>11 potential hosting market, or was it a more</p> <p>12 general meeting where hosting was just an</p> <p>13 agenda item?</p> <p>14 A. Both. It was a general opportunity</p> <p>15 for us to meet with them while they were with</p> <p>16 us, and then also specifically hosting was one</p> <p>17 of the topics.</p> <p>18 Q. Were you asked to make a presentation</p> <p>19 at this meeting?</p> <p>20 A. No.</p> <p>21 Q. And how many people did they bring --</p> <p>22 or scratch that. Did you attend this meeting?</p> <p>23 A. Yes.</p> <p>24 Q. How many people did they bring with</p>	<p>52</p> <p>1 of the market?</p> <p>2 A. No.</p> <p>3 Q. What were your ultimate conclusions</p> <p>4 regarding the size of the market in a year down</p> <p>5 the road?</p> <p>6 A. I based my conclusions primarily on</p> <p>7 Gartner's estimate because they were a very</p> <p>8 credible analyst. And I believe my conclusion</p> <p>9 was that there was a sizable market, and it was</p> <p>10 a logical step for us for a number of reasons</p> <p>11 and that it made sense to move into that space.</p> <p>12 Q. How sizeable? Do you remember?</p> <p>13 A. No.</p> <p>14 Q. Do you remember your -- the size</p> <p>15 estimate five years down the road?</p> <p>16 A. No.</p> <p>17 Q. And when you said it was a logical</p> <p>18 step for MRO, could you explain the reasons why</p> <p>19 you concluded it was a logical step for MRO?</p> <p>20 A. Our product architecture was at the</p> <p>21 right point. And the industry analysts said</p> <p>22 that was where the world was going.</p> <p>23 Q. Did the business plan make specific</p> <p>24 predictions about the level of revenue that MRO</p>

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<p>53</p> <p>1 could expect to generate from its hosting 2 initiative in the event that a decision was 3 made to implement it? 4 A. No. 5 Q. There were no spreadsheet projections 6 of what the income looked like? 7 A. I don't recall that, no. 8 Q. After you made your inquiry regarding 9 the size of the market, were there any other 10 components to the business plan that you were 11 working on? 12 A. I don't remember. I don't think so. 13 Q. Was your plan -- in the context of 14 your plan, were you asked to make some type 15 of recommendation as to whether it should 16 proceed -- MRO should proceed with this 17 initiative, or was yours just a planning 18 document to be given to decision-makers higher 19 up in the chain? 20 A. It was a planning document. I 21 believe the decision had already been made. 22 Q. Did Rich Caplow tell you the decision 23 had already been made before he asked you to 24 start working on this plan?</p>	<p>55</p> <p>1 Q. Okay. What was the next thing that 2 happened in connection with this initiative to 3 develop in-house hosting? 4 A. I worked with our -- the site where 5 our internal infrastructure resided in Toronto. 6 I worked with them to understand limitations 7 and the technical side of what that 8 infrastructure looked like. 9 Q. And what did you learn about the 10 limitations -- scratch that. Why did -- and 11 when we're talking about the site you just 12 referred to, we're talking about the OCS site 13 in London, Ontario? 14 A. Yes. 15 Q. Why was it that you began working 16 with them as part of this hosting initiative? 17 A. Our initial intention was to use some 18 capacity that already existed in the OCS 19 infrastructure that we felt we could utilize 20 and profit from as sort of an easing into the 21 market space. 22 Q. And did Rich give you the impression 23 that the hosting initiative was going to be 24 targeted at using up the excess capacity in the</p>
<p>54</p> <p>1 A. I don't recall. 2 Q. What was the source of your 3 impression that the decision had already been 4 made at the time that you were working on the 5 business plan? 6 A. I wasn't under the impression that my 7 job was to convince anybody that we should be 8 doing this; that it was, Put it in place and 9 execute it. 10 Q. But did anybody actually tell you 11 that that was -- you were going to put it in 12 place and execute it? 13 A. I got that impression from Rich. 14 Q. Do you remember the month when -- 15 well, you did complete the business plan? 16 A. Yes. 17 Q. Who did you submit it to? 18 A. Rich. 19 Q. Do you remember when you submitted it 20 to Rich? 21 A. No, no. 22 Q. Do you remember the year you 23 submitted it to Rich? 24 A. No.</p>	<p>56</p> <p>1 OCS site through the hosting initiative, or did 2 he convey to you that the hosting initiative 3 was going to be an initiative in its own right 4 that wouldn't be limited by capacity issues up 5 in London, Ontario? 6 A. Both. 7 Q. Okay. And what did you learn in 8 terms of limitations in the OCS facility? 9 A. I believe we sized it so that we had 10 room for about -- depending on the size of the 11 customer -- anywhere between five and ten 12 customer licenses. 13 Q. Any other limitations of a technical 14 nature? 15 A. None that were known. I mean, 16 data -- the size of the database would have 17 been an issue, but we were getting and we felt 18 like we had a good understanding of what that 19 would look like. 20 Q. So what comprised the capacity? Just 21 the personnel and support time that might be 22 available and physical hardware requirements? 23 Or was there something else other than those 24 two components?</p>

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<p>57</p> <p>1 A. Those two components summed it up.</p> <p>2 Q. After you obtained an understanding</p> <p>3 from the OCS people about what the limitations</p> <p>4 would be, what was the next thing you did in</p> <p>5 terms of getting this hosting initiative up and</p> <p>6 running?</p> <p>7 A. Creating a PowerPoint presentation to</p> <p>8 capture all that information.</p> <p>9 Q. What was the purpose of capturing</p> <p>10 that information in a PowerPoint?</p> <p>11 A. To share it with Rich and the team in</p> <p>12 terms of how this was taking shape.</p> <p>13 Q. Did you use this -- did you share</p> <p>14 this PowerPoint presentation with Mr. Caplow?</p> <p>15 A. Yes.</p> <p>16 Q. What was done with it after you</p> <p>17 showed it to Mr. Caplow?</p> <p>18 A. I don't know.</p> <p>19 Q. Did you ever use it in connection</p> <p>20 with any presentation that you made to anyone</p> <p>21 else at MRO about this initiative?</p> <p>22 A. Yes.</p> <p>23 Q. How else did you use that</p> <p>24 presentation?</p>	<p>59</p> <p>1 initiative?</p> <p>2 A. Part of presentation focused on</p> <p>3 pricing. That was one element of that</p> <p>4 presentation. And then communicating that to</p> <p>5 the sales organization.</p> <p>6 Q. So what do you remember doing on the</p> <p>7 issue of pricing for hosting?</p> <p>8 A. We picked a number. Somewhere</p> <p>9 between the low, low estimate that we had been</p> <p>10 given or that we had heard and the high one.</p> <p>11 And we thought that would be palatable.</p> <p>12 Q. You're talking about pricing for the</p> <p>13 end user of the hosting service?</p> <p>14 A. Yes.</p> <p>15 Q. Was this all added to the price book</p> <p>16 at some point?</p> <p>17 A. Yes.</p> <p>18 Q. Did your pricing structure differ</p> <p>19 depending on whether the hosting was occurring</p> <p>20 in North America versus Europe, for example,</p> <p>21 other than currency conversion issues?</p> <p>22 A. No.</p> <p>23 Q. Were you actually responsible for</p> <p>24 adding this hosting pricing information to the</p>
<p>58</p> <p>1 A. At some point, I don't recall when,</p> <p>2 we did an internal web cast to share that</p> <p>3 information with sales management.</p> <p>4 Q. Other than that web casts, anything</p> <p>5 else?</p> <p>6 A. I did a presentation at one of our</p> <p>7 sales meetings.</p> <p>8 Q. Was this a regional sales meeting or</p> <p>9 was that more, you know, a yearly meeting of</p> <p>10 all the sales personnel or --</p> <p>11 A. It was our annual global sales</p> <p>12 meeting.</p> <p>13 Q. Do you remember for what year?</p> <p>14 A. No.</p> <p>15 Q. Was anything else done with this</p> <p>16 PowerPoint presentation that you can remember?</p> <p>17 A. I passed it on to my management, so</p> <p>18 it may have been forwarded and used elsewhere.</p> <p>19 Q. But you're not specifically aware of</p> <p>20 that?</p> <p>21 A. No.</p> <p>22 Q. After you developed the PowerPoint</p> <p>23 presentation, what was the next thing you did</p> <p>24 as part of the effort to develop a hosting</p>	<p>60</p> <p>1 price book?</p> <p>2 A. Yes.</p> <p>3 Q. Other than figuring this out, picking</p> <p>4 the number, and adding it to the price book,</p> <p>5 did you do anything else in terms of how to</p> <p>6 price the hosting service that you remember?</p> <p>7 A. No.</p> <p>8 Q. Let's turn to communicating the</p> <p>9 information to the sales organization. Can you</p> <p>10 tell me the first thing you did in connection</p> <p>11 with that?</p> <p>12 A. It was either the sales meeting</p> <p>13 presentations or a Webex. I believe I did</p> <p>14 both, but I don't know which came first.</p> <p>15 Q. Do you remember when you presented</p> <p>16 this to the sales meeting?</p> <p>17 A. No.</p> <p>18 Q. Do you remember when the Webex</p> <p>19 occurred?</p> <p>20 A. No.</p> <p>21 Q. Do you remember the year?</p> <p>22 A. Approximately 2002.</p> <p>23 Q. What was involved in -- well, what</p> <p>24 were the components -- scratch that. Did you</p>

<p style="text-align: right;">105</p> <p>1 what Pat was there to discuss in the first 2 place. 3 Q. Okay. But if they presented that 4 information in that manner, why in your view in 5 the e-mail would this presentation have been 6 understandable? 7 A. Because at this point, I believe we 8 had already discussed having our own hosting 9 business. And I was probably -- it was likely 10 at that point that M2 was aware of that. 11 Q. And did you have an understanding 12 that M2 would have identified MRO's entry into 13 the hosting business as an adverse development 14 in their relationship? 15 A. I think it would have been 16 questionable. They would have had questions 17 about it. I don't know that adversarial is the 18 right word. 19 Q. Did you also hear in connection with 20 Pat McHale's visit that he was asking M2 about 21 some of this subject information? 22 A. No. 23 Q. So then why did you say, From what I 24 heard, they were evasive with much of that</p>	<p style="text-align: right;">107</p> <p>1 wasn't defined yet. 2 Q. What was the source of your 3 understanding that people recognized that the 4 relationship would change? 5 A. Well, I had been asked to develop a 6 hosting plan into the mid-market. So I had 7 already gone down the path of setting that up 8 and inquiring and trying to piece together an 9 MRO software hosting offering. 10 Q. In addition to the fact that you had 11 been assigned that task, was there anything 12 else that anyone said to you or any document 13 that you saw that lead you to the belief that 14 the relationship with M2 would be changing? 15 A. No. 16 Q. Now, going to the third paragraph of 17 this e-mail where you say, In our conversation 18 yesterday, you mentioned that we might want to 19 discourage customers from buying options 20 through our pricing. I'm not sure this is a 21 good idea. We could end up booking some 22 incremental PS revenue if we find customers 23 willing to go the extra yard. 24 We can price it so it's profitable.</p>
<p style="text-align: right;">106</p> <p>1 information, if you didn't think Pat McHale was 2 inquiring about that information during his 3 visit? 4 A. My assumption is, because Pat is the 5 VP of support, that he was there for support 6 related reasons. And support is all part of 7 the marketing relationship. So I would assume 8 that his questions were kind of about how 9 things were done in supporting the product. 10 And there may have been some issues 11 he was addressing. I don't know. If he was 12 asking questions about their model or their 13 support model, then I would expect that they 14 might have been evasive. 15 Q. And was that because there was a 16 general understanding that some of M2's 17 business process information was proprietary to 18 M2? 19 A. No. I would say that it was because 20 our relationship was going to change, 21 obviously, at that point. I would say that 22 people were under the understanding that 23 something was going to happen, that our 24 relationship was going to change and that that</p>	<p style="text-align: right;">108</p> <p>1 I'm sure M2 does this, or this wouldn't be 2 their core business. But I think we need to be 3 competitive with M2 or this doesn't make sense. 4 You say, I've copied Ray, who also has a lot of 5 experience working with M2 and has a good feel 6 for how they do their business. 7 Does this refresh your recollection 8 as to whether you were interested in how M2 9 made a profit in connection with its 10 web-hosting of MAXIMO? 11 A. No. This was related, this third 12 paragraph, to options, meaning our additional 13 add-on capabilities, which John was -- at first 14 was not interested in getting caught up in the 15 complexities of offering a customer additional 16 capabilities to add on to core MAXIMO. 17 So my point was we need to have -- we 18 need to be able to show a differentiation 19 between us and any competitor by being able to 20 offer more capabilities, and this would be one 21 way of doing it, would be to be able to sell 22 additional capabilities on top of MAXIMO that 23 M2 wasn't currently selling. 24 Q. Then why do you say in the following</p>

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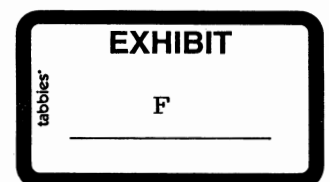
<p style="text-align: right;">109</p> <p>1 sentence, I think we need to be competitive</p> <p>2 with M2 or this doesn't make sense, if M2</p> <p>3 wasn't selling capabilities in the first place?</p> <p>4 A. Because if we didn't add these</p> <p>5 capabilities on, then we would be offering the</p> <p>6 same thing as M2. And I think that at that</p> <p>7 point, I was trying to find ways for us to,</p> <p>8 obviously, have a different offering than M2.</p> <p>9 Q. And your concern with being</p> <p>10 competitive with M2, that was based on your</p> <p>11 view that once you went into the hosting, MRO</p> <p>12 went into the hosting business, M2 would be a</p> <p>13 competitor?</p> <p>14 A. Possibly. But I guess I think the</p> <p>15 other option on the table was that M2 wouldn't</p> <p>16 be doing a hosting anymore if we could pick up</p> <p>17 that area of the business, and this would be a</p> <p>18 partnership, a different partnership, in place</p> <p>19 with M2.</p> <p>20 Q. Okay. But at least as to hosting,</p> <p>21 there was at least some concern that your</p> <p>22 pricing had to be competitive with M2?</p> <p>23 A. Yes, yes.</p> <p>24 Q. And did Ray respond to this e-mail by</p>	<p style="text-align: right;">111</p> <p>1 say to you that figuring out where ACSPs fit</p> <p>2 into the hosting model was an error or an</p> <p>3 omission in the model that MRO had with M2?</p> <p>4 A. He didn't say that, no.</p> <p>5 Q. Okay. Let me show you what we've</p> <p>6 marked as Exhibit 124 and ask you if you've</p> <p>7 seen this document before.</p> <p>8 (Pause.)</p> <p>9 A. Yes, I believe I was copied on this.</p> <p>10 Q. Okay. In the subject line for this</p> <p>11 calendar entry that says, MAXIMO hosting</p> <p>12 progress update, are these the monthly meetings</p> <p>13 you were talking about earlier?</p> <p>14 A. No. I had my own, sort of, local</p> <p>15 monthly meetings with my team. This one was to</p> <p>16 a much broader audience, including executives,</p> <p>17 it looks like. And it was chaired by Terry, so</p> <p>18 this was Terry's meeting.</p> <p>19 Q. Who was Holly Jaaouani?</p> <p>20 A. She works for legal.</p> <p>21 Q. And did you attend this meeting?</p> <p>22 A. I don't know.</p> <p>23 Q. Who is James Dunmore-Smith?</p> <p>24 A. A consultant.</p>
<p style="text-align: right;">110</p> <p>1 providing any additional information as to how</p> <p>2 M2 did their business?</p> <p>3 A. Not that I recall, no.</p> <p>4 Q. Do you know whether John Smit</p> <p>5 contacted Pat McHale to find out what he'd been</p> <p>6 able to learn about M2's pricing offer or how</p> <p>7 they did their business?</p> <p>8 A. I don't know.</p> <p>9 Q. Did he ever report to you that he had</p> <p>10 made any additional inquiry on this?</p> <p>11 A. Not that I recall, no.</p> <p>12 Q. Did the document template for</p> <p>13 detailed safety of work that you ultimately</p> <p>14 developed contain any information that you</p> <p>15 obtained about or from M2?</p> <p>16 A. No.</p> <p>17 Q. Let me show you what we've marked as</p> <p>18 Document 123.</p> <p>19 (Pause.)</p> <p>20 Q. Do you know whether you saw any of</p> <p>21 the e-mails in this chain at any point?</p> <p>22 A. This does not look familiar, no.</p> <p>23 Q. Okay. In discussions that you had</p> <p>24 with Ray Miciek at any point, did Mr. Miciek</p>	<p style="text-align: right;">112</p> <p>1 Q. What was he retained to do?</p> <p>2 A. He is an MRO software consultant who</p> <p>3 gets sent to customer sites for various</p> <p>4 projects.</p> <p>5 Q. If we look down here, it appears</p> <p>6 under the calendar item that there is a list of</p> <p>7 things. And do you see that list of things</p> <p>8 under your name?</p> <p>9 A. Mm-hmm.</p> <p>10 Q. Do you have any understanding as to</p> <p>11 what was meant by the bullet point, Send out a</p> <p>12 packaging and pricing document?</p> <p>13 A. No.</p> <p>14 Q. Going to the second page of this</p> <p>15 exhibit, where it says, Work with Mike Dziekan</p> <p>16 and define base set-up included in subscription</p> <p>17 fee and add-on services available on time and</p> <p>18 materials basis. Do you have any understanding</p> <p>19 as to what that bullet point was talking about?</p> <p>20 A. Yes.</p> <p>21 Q. Who is Mike Dziekan?</p> <p>22 A. He is the director of professional</p> <p>23 services, now vice president of one of the arms</p> <p>24 of professional services. And he at one time</p>

<p style="text-align: right;">125</p> <p>1 your memory, prior to November 4, 2002?</p> <p>2 A. Probably the initial stages, yes.</p> <p>3 Q. Did you have any further discussions</p> <p>4 with anyone at MRO regarding the contract</p> <p>5 between MRO and M2?</p> <p>6 A. No.</p> <p>7 Q. In developing your business plan, did</p> <p>8 you address at all MRO's contractual commitment</p> <p>9 to M2 as a web-hosting partner as part of the</p> <p>10 overall business plan that you were preparing?</p> <p>11 A. No.</p> <p>12 Q. In connection with the developing of</p> <p>13 MRO's internal hosting initiative, was any</p> <p>14 thought given to whether MRO would continue to</p> <p>15 use external hosting partners in conjunction</p> <p>16 with its own internal program or whether</p> <p>17 alternatively relationships with those partners</p> <p>18 were supposed to be phased out or terminated?</p> <p>19 MR. BRATTEN: Objection.</p> <p>20 A. I don't remember specific discussions</p> <p>21 about that.</p> <p>22 Q. Do you remember any general</p> <p>23 discussions that were -- that concerned that</p> <p>24 subject?</p>	<p style="text-align: right;">127</p> <p>1 MRO's internal hosting application was</p> <p>2 presented to the sales force, did Mr. Miciek</p> <p>3 tell you that his problems with M2 were worse</p> <p>4 or had become worse in some way?</p> <p>5 A. No.</p> <p>6 Q. I'd like to show you what we've</p> <p>7 previously marked as Exhibit 59 and ask you if</p> <p>8 you've ever seen that before.</p> <p>9 A. No, I haven't.</p> <p>10 Q. Did you have any interaction when you</p> <p>11 were focused on MAXIMO mid-tier with Jason</p> <p>12 Kasper?</p> <p>13 A. Yes.</p> <p>14 Q. Did any of that interaction concern</p> <p>15 M2 at all?</p> <p>16 A. Not that I recall.</p> <p>17 Q. What about any interaction with Joe</p> <p>18 Leoni?</p> <p>19 A. Yes.</p> <p>20 Q. Did any of that interaction concern</p> <p>21 M2?</p> <p>22 A. No, not that I recall.</p> <p>23 Q. I'd like to show you what we've</p> <p>24 marked as Exhibit 64 and ask you if those are</p>
<p style="text-align: right;">126</p> <p>1 A. No. But I assumed that if we were</p> <p>2 going to be creating a program, at some point</p> <p>3 it would alter those kinds of partnerships. So</p> <p>4 I just assumed that something would be taken</p> <p>5 care of and handled at that level.</p> <p>6 Q. I'd like to show you what we've</p> <p>7 marked previously as Exhibit No. 8 and ask you</p> <p>8 if you've ever seen that before.</p> <p>9 A. No, I haven't.</p> <p>10 Q. In preparation -- and once again,</p> <p>11 this is just a yes or no question -- in</p> <p>12 preparation for the MRO hosting initiative, did</p> <p>13 you receive any input whatsoever from MRO</p> <p>14 legal?</p> <p>15 A. Can you repeat the question?</p> <p>16 Q. In preparation of the MRO hosting</p> <p>17 initiative, did you receive any input</p> <p>18 whatsoever from MRO legal? And I'm only</p> <p>19 looking for a yes or no answer.</p> <p>20 A. No.</p> <p>21 Q. Did you learn subsequently that MRO</p> <p>22 had terminated its relationship with M2?</p> <p>23 A. No.</p> <p>24 Q. After the Webex where M2 -- where</p>	<p style="text-align: right;">128</p> <p>1 your notes.</p> <p>2 A. No, those are not mine.</p> <p>3 Q. I'd like to show you what we've</p> <p>4 marked as Exhibit 65 previously in this case.</p> <p>5 It's another e-mail chain. And I'd like to</p> <p>6 direct your attention to the e-mail that's cut</p> <p>7 off on the bottom of the first page, which is</p> <p>8 Chip Drapeau. It says, Let me echo Bill's</p> <p>9 comments so there is no misunderstanding.</p> <p>10 A. Mm-hmm.</p> <p>11 Q. If you would read the, sort of,</p> <p>12 e-mails on that second page, I have a quick</p> <p>13 question.</p> <p>14 (Pause.)</p> <p>15 Q. Do you remember any controversy</p> <p>16 within MRO about how and when the MRO internal</p> <p>17 hosting capabilities should be used versus when</p> <p>18 a lead should go to M2?</p> <p>19 A. No.</p> <p>20 Q. Did Mr. Miciek ever tell you that he</p> <p>21 was being pressured by MRO senior executives to</p> <p>22 steer hosting leads to MRO's internal hosting</p> <p>23 program rather than to M2?</p> <p>24 A. No.</p>

Deposition of Kathleen M. Doyle

December 1, 2005

<p>129</p> <p>1 Q. Did you ever do any work with Patty 2 Foye? 3 A. Very little, but yes. 4 Q. Did you ever do any work with her in 5 connection with the preparation of the hosting 6 initiative? 7 A. No. 8 Q. Did you ever review any documents as 9 part of your development of the hosting 10 initiative from Tom Shulte to anyone at MRO 11 regarding how to price hosting in the 12 marketplace? 13 A. No. 14 Q. Did you, in your work as providing 15 sales support for MAXIMO, form any opinion as 16 to whether the hosting service provided by M2, 17 when they were an MRO hosting partner, was a 18 quality offering in the marketplace? 19 A. No opinion. 20 Q. So you didn't form an opinion as to 21 whether M2 was doing a particularly good job or 22 particularly bad job? 23 A. No. 24 Q. Did Mr. Miciek ever give you any</p>	<p>131</p> <p>1 that e-mail is talking about when he's talking 2 about stealth mode? 3 A. No. 4 Q. I'd like to show you what we've 5 marked previously as Exhibit 112. I direct 6 your attention to the e-mail at the top of the 7 page, which is Bill Sawyer to Ted Williams. I 8 just ask you if you've ever seen that before. 9 A. Yes, I have. 10 Q. The reference in there to you and a 11 complete product launch, can you tell me what 12 your understanding is of what a complete 13 product launch for MAXIMO hosting services 14 would consist of? 15 A. In this case, it would have been an 16 internal product launch. And the word "launch" 17 is a little bit dramatic for this, but it would 18 have been probably a presentation in the form, 19 given in the form of a webinar to the sales 20 organization that covered everything they 21 needed to know about this offering, pricing, 22 positioning, any kind of data sheets or 23 collateral. And it would probably be provided 24 to them later in a zipped-up file with some</p>
<p>130</p> <p>1 input into whether M2 was good at hosting 2 MAXIMO or not? 3 A. No. 4 Q. I'd like to show you what we've 5 marked as Exhibit 96 and ask you if you've ever 6 seen that document. 7 A. No. 8 Q. Just so we're clear, you didn't 9 consult this in preparing your business plan or 10 any portion of the MRO hosting initiative? 11 A. No. 12 Q. I'd like to show you what we've 13 marked as Exhibit 101 and just direct your 14 attention to the e-mail that's cut off at the 15 very top of the page. It's from Rich. Can't 16 really tell from this exhibit exactly who it's 17 to. 18 I just ask you if the reference to 19 being in stealth mode refreshes your 20 recollection as to what specifically stealth 21 mode was supposed to be relative to the release 22 of the MRO internal hosting capabilities? 23 A. I don't know. 24 Q. You don't know what the author of</p>	<p>132</p> <p>1 documents that they could have, like a price 2 book and things like that, which could be part 3 of the deliverable for this kind of an internal 4 launch. 5 Q. Did you develop all of that and put 6 it in the appropriate channels? 7 A. Yes. 8 MR. RESNICK: Off the record. 9 (Discussion off the record.) 10 Q. Were you involved in any way in the 11 negotiation of either the agreement between M2 12 and MRO that was signed in 2000 or the 13 agreement between M2 and MRO that was signed in 14 2002? 15 A. No. 16 Q. Did anyone at MRO ever tell you that 17 Mr. Bevington was told that if he signed the 18 2002 agreement, which was the agreement that 19 Mr. Miciek faxed to you, M2's web-hosting 20 capabilities would be rolled out to the North 21 American sales force? 22 A. No. 23 Q. Do you have any understanding as to 24 what the term "roll-out to North American</p>



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November 22, 2005

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PAGES 1-87
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 03-12589-GAO

M2 CONSULTING, INC.
Plaintiff

vs.

MRO SOFTWARE, INC.
Defendant

DEPOSITION OF JASON SCOTT KASPER, taken on behalf of the plaintiff, pursuant to the Federal Rules of Civil Procedure, before Irma Widomski, Registered Merit Reporter, Certified Shorthand Reporter, No. 016512 and Notary Public, in and for the Commonwealth of Massachusetts, at Gesmer UpdeGrove, LLP, 40 Broad Street, Boston, Massachusetts, on Tuesday, November 22, 2005, commencing at 10:00 a.m.

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Jason Scott Kasper

BY Mr. Resnick 5

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NO. PAGE DESCRIPTION

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9 84 54 E-mail 3/1/02, Bates No. MRO No. 00523

10 85 54 E-mail 11/1/01, Bates No. MRO 00072

11 86 54 E-mail, 10/31/01, Bates No. MRO 00067

12 87 54 E-mail 8/15/01, Bates No. MRO 00036

13 88 54 E-mail chain, 8/24/01, Bates No. MRO 00038

14 89 54 E-mail, 8/29/01, Bates No. MRO 00041 to 00042

15 90 54 E-mail 6/7/01, Bates No. MRO 00028 to 00034

16 91 54 E-mail, 11/1/01, Bates No. MRO 00072

17 92 54 E-mail 9/20/01, Bates No. MRO 01361

18 93 54 E-mail 9/20/01, Bates No. MRO 01362

19 94 79 MRO Software, Announcing Application Hosting for MAXIMO, Bates No. MRO 01384 to 01385

20 95 79 Mantis Application Hosting from M2 Consulting, Bates No. MRO 01529

21 96 79 Mantis QuickStart for MAXIMO, Bates No. MRO 01530

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97 79 M2 Consulting/MRO Software
Proposed contract changes, Bates No. MRO 01391

November 22, 2005

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<p style="text-align: right;">61</p> <p>1 A. I don't recall.</p> <p>2 Q. I would like to show you what we've marked as</p> <p>3 Exhibit 88. This is an e-mail chain and I would</p> <p>4 like to direct your attention to the first part</p> <p>5 of the chain which is on the bottom. Jason</p> <p>6 Kasper to Rick Bevington, August 24, 2001.</p> <p>7 Where you say, "I am not sure how you would like</p> <p>8 to proceed with the contract but I have listed a</p> <p>9 few changes I would like to use as a starting</p> <p>10 point." What contract are you talking about in</p> <p>11 that e-mail?</p> <p>12 A. It's the partner agreement between M2 and MRO</p> <p>13 Software.</p> <p>14 Q. Well, now, were you aware in August of 2001 that</p> <p>15 MRO and M2 had already executed an agreement?</p> <p>16 A. Can you clarify that?</p> <p>17 Q. Sure. I would like to show you what we've</p> <p>18 previously marked in this case as Exhibit No. 3.</p> <p>19 And if you turn to the back, I think you'll see</p> <p>20 a date there.</p> <p>21 A. Yes.</p> <p>22 Q. Of March 2000. And that I'll represent for the</p> <p>23 record is an agreement between M2 and MRO, were</p> <p>24 you aware that that agreement was in existence</p>	<p style="text-align: right;">63</p> <p>1 with the alliance partners that you were in</p> <p>2 charge of?</p> <p>3 A. Yes.</p> <p>4 Q. Well, on the second part of this e-mail says,</p> <p>5 "Have you had an opportunity to speak with Chip</p> <p>6 about the credit enhancement," what do you mean</p> <p>7 by the credit enhancement?</p> <p>8 A. I do not know.</p> <p>9 Q. And at what point would Nancy Gilroy get</p> <p>10 involved in the process when you were</p> <p>11 renegotiating or negotiating an agreement with</p> <p>12 as alliance partner?</p> <p>13 A. She would work with me simultaneously on the</p> <p>14 agreement.</p> <p>15 Q. And did you talk to her before you suggested</p> <p>16 changes to the agreement that are referenced in</p> <p>17 this e-mail?</p> <p>18 A. I don't recall.</p> <p>19 Q. Do you recall what the changes were that you</p> <p>20 referred to as having listed?</p> <p>21 A. No. I do remember maybe one of them and that</p> <p>22 was probably, that was the exclusivity clause</p> <p>23 within the agreement.</p> <p>24 Q. Coming in or going out?</p>
<p style="text-align: right;">62</p> <p>1 at the time you sent this e-mail to Rick</p> <p>2 Bevington in August of 2001?</p> <p>3 A. Yes.</p> <p>4 Q. And what was the partner agreement supposed to</p> <p>5 do?</p> <p>6 A. This agreement?</p> <p>7 Q. No. Okay, let me back up. I think you said</p> <p>8 that when I asked you what contract you were</p> <p>9 talking about in Exhibit 88, you said a partner</p> <p>10 agreement. And I guess my question is why were</p> <p>11 you talking to Mr. Bevington about negotiating a</p> <p>12 partner agreement in August of 2001?</p> <p>13 A. My recollection is that this agreement from</p> <p>14 March 2000 was expiring or we had a requirement</p> <p>15 to renegotiate the contract.</p> <p>16 Q. Do you know which of those two it was, expires</p> <p>17 or a requirement to renegotiate the contract?</p> <p>18 A. No.</p> <p>19 Q. And why is it that you were talking to</p> <p>20 Mr. Bevington about changes to the agreement as</p> <p>21 a starting point in August of 2001?</p> <p>22 A. Because it was either the agreement expired or</p> <p>23 we had to renew the agreement for some reason.</p> <p>24 Q. Were you in charge of negotiating agreements</p>	<p style="text-align: right;">64</p> <p>1 A. I'm sorry.</p> <p>2 Q. Was the change to put it in or to take it out?</p> <p>3 A. To take it out.</p> <p>4 Q. Had you talked with Nancy Gilroy about removing</p> <p>5 exclusivity from a new agreement?</p> <p>6 A. Yes.</p> <p>7 Q. What did she tell you about that?</p> <p>8 A. That that was acceptable to negotiate that out</p> <p>9 of the agreement.</p> <p>10 Q. And did she suggest that exclusivity should come</p> <p>11 out of the new agreement, did she suggest that</p> <p>12 to you?</p> <p>13 A. I don't recall.</p> <p>14 Q. Was removing exclusivity from the new agreement</p> <p>15 your idea?</p> <p>16 A. No.</p> <p>17 Q. Well, do you have any understanding as to the</p> <p>18 reason why exclusivity was one of the changes</p> <p>19 that MRO was suggesting for the new agreement?</p> <p>20 A. We had a corporate policy at that time to not</p> <p>21 have -- we do not offer exclusivity to any</p> <p>22 partner agreement.</p> <p>23 Q. Was that also a corporate policy that was in</p> <p>24 effect in 2000?</p>

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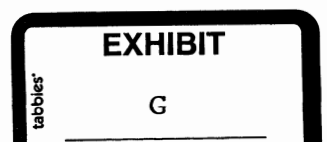
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<p style="text-align: right;">65</p> <p>1 A. I do not know.</p> <p>2 Q. Did you ever hear anyone say prior to 2001 that</p> <p>3 an exclusivity provision in M2's contract was in</p> <p>4 any way inconsistent with corporate policy?</p> <p>5 A. Yes.</p> <p>6 Q. Who said that?</p> <p>7 A. I don't recall who but within our group, that</p> <p>8 was mentioned. In the M2 agreement that stuck</p> <p>9 out, the exclusivity as it shouldn't be there.</p> <p>10 Q. And that was just a conversation you overheard</p> <p>11 in the alliance group at some point in time?</p> <p>12 A. Yes.</p> <p>13 Q. But you don't remember who made that statement?</p> <p>14 A. No.</p> <p>15 Q. Do you remember when that statement was made?</p> <p>16 A. No.</p> <p>17 Q. Do you remember whether it was in 2000 or 2001?</p> <p>18 A. 2001.</p> <p>19 Q. Do you remember anything else that was said at</p> <p>20 that point in time when that statement was made?</p> <p>21 A. No.</p> <p>22 Q. How -- after this e-mail exchange in August,</p> <p>23 late August of 2001 -- how frequently did you</p> <p>24 communicate with Mr. Bevington regarding the</p>	<p style="text-align: right;">67</p> <p>1 What is your understanding of whether</p> <p>2 frontline support has anything to do with</p> <p>3 whether somebody has to pay ACSP?</p> <p>4 MR. BRATTEN: Objection.</p> <p>5 A. Can you repeat that question?</p> <p>6 Q. Sure. Do you have any understanding as to</p> <p>7 whether ACSP, the obligation to pay ACSP by an</p> <p>8 alliance partner is different if a partner is</p> <p>9 providing frontline support?</p> <p>10 A. Yes.</p> <p>11 Q. And what's your understanding of that?</p> <p>12 A. Typically, if a partner handles front-line</p> <p>13 support, there may be negotiated in the contract</p> <p>14 a different requirement in terms of payment to</p> <p>15 us for what is expected in terms of revenue for</p> <p>16 the support portion of whatever sale they sell.</p> <p>17 Q. So does front-line support mean if the customer</p> <p>18 has a problem, they call the partner first?</p> <p>19 A. Yes.</p> <p>20 Q. As opposed to they call the MRO help desk first?</p> <p>21 A. Yes.</p> <p>22 Q. And did M2 provide front-line support in 2001 as</p> <p>23 part of its service?</p> <p>24 MR. BRATTEN: Objection.</p>
<p style="text-align: right;">66</p> <p>1 negotiation of a new agreement?</p> <p>2 A. I don't recall.</p> <p>3 Q. Do you recall any other specific terms that you</p> <p>4 discussed with Mr. Bevington regarding the</p> <p>5 negotiation of a new agreement?</p> <p>6 A. No.</p> <p>7 Q. Now I would like to show you what we have marked</p> <p>8 as Exhibit 89 and the very first piece of this</p> <p>9 e-mail chain which is at the bottom of the</p> <p>10 second page is you to Mr. Bevington on August</p> <p>11 28, 2001, you were asking him whether he pays</p> <p>12 ACSP, was it Patty Foye who asked you to or Pat</p> <p>13 McHale who asked you to find out that</p> <p>14 information?</p> <p>15 A. I don't recall. Looking at this, it says</p> <p>16 maintenance renewals group, so that's who asked</p> <p>17 me. I do not know specifically who.</p> <p>18 Q. Now the second e-mail in this chain which starts</p> <p>19 at the bottom of the first page, it goes over</p> <p>20 onto the second from Rick Bevington to you on</p> <p>21 August 28, when he says, "We pay what we pay.</p> <p>22 It is not broken out by seats and ACSP." Then</p> <p>23 the next sentence he says, "We do in fact by</p>	<p style="text-align: right;">68</p> <p>1 A. I don't recall.</p> <p>2 Q. Is it that if an alliance partner is providing</p> <p>3 front-line support, then they have to pay less</p> <p>4 of an ACSP fee, a lower percentage?</p> <p>5 A. Typically, yes.</p> <p>6 Q. Was there any talk at MRO in 2001 about</p> <p>7 abandoning the M2 relationship because payment</p> <p>8 of ACSP's had not been negotiated into the</p> <p>9 original agreement that you are aware of?</p> <p>10 A. No.</p> <p>11 Q. Now I would like to show you what we've marked</p> <p>12 as Exhibit 90. This is an e-mail with some</p> <p>13 attachments. Can you just turn to the back page</p> <p>14 and tell me if it says MRO 00034?</p> <p>15 A. Yes.</p> <p>16 Q. So, for the record, it's a series of documents</p> <p>17 bearing the Bates Numbers MRO 28 through MRO 34.</p> <p>18 Looking on the first page, it's Tom Schulte to</p> <p>19 Mr. Leone and you dated May 1, 2001, where he</p> <p>20 says, "Finally, M2 Mantis M-A-N-T-I-S,</p> <p>21 application hosting activity report 2001.xls."</p> <p>22 It appears to be an attachment. Is this the</p> <p>23 sales reporting report we were talking about</p> <p>24 earlier that Mr. Leone and Mr. Schulte were</p>

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M2 CONSULTING, INC. VS. MRO SOFTWARE, INC.

<p style="text-align: right;">77</p> <p>1 specifically, what did you learn about that?</p> <p>2 A. That it wasn't worth their time based on the</p> <p>3 pricing model and their compensation plan.</p> <p>4 Q Who told you that?</p> <p>5 A Sales person.</p> <p>6 Q Do you remember the name of the sales person?</p> <p>7 A Bill King.</p> <p>8 Q Did you have any other discussions about that</p> <p>9 subject with anyone other than Bill King?</p> <p>10 A. No.</p> <p>11 Q Did anybody at MRO -- scratch that. Did you</p> <p>12 ever hear anyone at MRO saying that M2 was a</p> <p>13 difficult alliance partner in any way?</p> <p>14 A. No.</p> <p>15 Q. Did you ever have any discussions with M2</p> <p>16 regarding a web cast to the entire North</p> <p>17 American sales force of MRO about M2's</p> <p>18 capabilities?</p> <p>19 A. No.</p> <p>20 Q. Did Mr. Bevington ever use the term roll out to</p> <p>21 North American sales in any conversation or</p> <p>22 communication with you that you remember?</p> <p>23 A. I don't recall.</p> <p>24 Q. What's your understanding as to what it means to</p>	<p style="text-align: right;">79</p> <p>1 discussion regarding increasing the percentage</p> <p>2 that M2 paid to MRO on sales of hosted MAXIMO?</p> <p>3 A. I don't recall.</p> <p>4 Q. Was there any discussion about including in that</p> <p>5 agreement a provision known as an integration</p> <p>6 clause?</p> <p>7 MR. BRATTEN: Objection.</p> <p>8 A. I don't recall.</p> <p>9 Q Was there any discussion when you were involved</p> <p>10 in the negotiations regarding a clause known as</p> <p>11 a termination for convenience clause?</p> <p>12 MR. BRATTEN: Objection.</p> <p>13 A. I don't recall.</p> <p>14 Q. Do you know whether anyone at MRO represented to</p> <p>15 Mr. Bevington that if he signed the new</p> <p>16 agreement that was being proposed by MRO, MRO</p> <p>17 would provide an increased level of sales</p> <p>18 support for M2's web hosting capability?</p> <p>19 A. I don't recall that.</p> <p>20 MR. RESNICK: I would like to take</p> <p>21 five minutes to check my notes but I think we're</p> <p>22 just about done.</p> <p>23 (Exhibits 94-97 marked for identification.)</p> <p>24 (Recess.)</p>
<p style="text-align: right;">78</p> <p>1 roll a product out to the MRO sales force?</p> <p>2 A. My understanding is to inform sales of what a</p> <p>3 partner is, what they do, and how to contact</p> <p>4 them for more information.</p> <p>5 Q. Anything else that's part of that general?</p> <p>6 A Possibly could include sales presentations but</p> <p>7 not always, marketing information sheets that</p> <p>8 are for external use, website listing on MRO</p> <p>9 dot-com in the partner sections of our website.</p> <p>10 That's typically it.</p> <p>11 Q. What does marketing do in terms of supporting</p> <p>12 alliance partners? Strike that. What did</p> <p>13 marketing do in 2001 in connection with</p> <p>14 supporting MRO's alliance partners?</p> <p>15 A Worked at signing them up for MRO World to</p> <p>16 exhibit, helped with marketing collateral if it</p> <p>17 was required, and potentially web casts.</p> <p>18 Q. What does marketing collateral mean?</p> <p>19 A Typically, there would be a one-page sheet that</p> <p>20 would talk about who the partner was, had MRO's</p> <p>21 logo and the partner's logo on it and that was</p> <p>22 used to give to prospects.</p> <p>23 Q When you began negotiating changes for inclusion</p> <p>24 in a new agreement with M2, was there any</p>	<p style="text-align: right;">80</p> <p>1 BY MR. RESNICK:</p> <p>2 Q Now, I would like to show you what we've marked</p> <p>3 as Exhibit 94. My first question is whether you</p> <p>4 have ever seen that document before?</p> <p>5 A. Yes.</p> <p>6 Q Is that the document that was ultimately sent to</p> <p>7 the entire sales force to inform it about M2's</p> <p>8 capability?</p> <p>9 A. North America sales, yes.</p> <p>10 Q. North American sales, okay. I would like to</p> <p>11 show you what we've marked as Exhibit 95, and</p> <p>12 ask you if you have ever seen that before?</p> <p>13 A. Yes.</p> <p>14 Q. Do you have any understanding as to why that</p> <p>15 document was created?</p> <p>16 MR. BRATTEN: Objection.</p> <p>17 A. I don't recall.</p> <p>18 Q. Do you have any understanding as to what it was</p> <p>19 used for?</p> <p>20 A. I believe it was used for the meeting at -- in</p> <p>21 Atlanta.</p> <p>22 Q I would like to show you what we've marked as</p> <p>23 Exhibit No 96 and ask you have you seen that</p> <p>24 document before?</p>



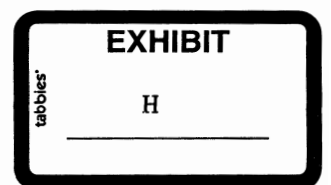
Ted Williams**Condenselt™****June 22, 2005**

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<p>1 VOL. I 2 Pp. 1 - 134 3 Exhibits 1 - 10</p> <p>4 UNITED STATES DISTRICT COURT 5 DISTRICT OF MASSACHUSETTS</p> <p>6 C.A. NO: 03-12589-GAO</p> <p>7 * * * * *</p> <p>8 M2 CONSULTING, INC., 9 Plaintiff 10 VS. 11 MRO SOFTWARE, INC., 12 Defendant 13 * * * * *</p> <p>14 Deposition of TED WILLIAMS, a witness called by 15 counsel for the Plaintiff, pursuant to the Federal 16 Rules of Civil Procedure, before Lorreen 17 Hollingsworth, CSR/RPR, CSR No. 114793, and Notary 18 Public in and for the Commonwealth of Massachusetts, 19 at the Offices of Fee, Rosse & Lanz, P.C., 321 Boston 20 Post Road, Sudbury, Massachusetts, on Wednesday, 21 June 22, 2005, at 10:05 a.m. 22 23 24</p>	<p>1 I N D E X</p> <p>2 Deposition of: DIRECT CROSS</p> <p>3 TED D. WILLIAMS 4 (by Mr. Resnick) 6</p> <p>5 E X H I B I T S</p> <p>6 No. For Ident.</p> <p>7 1 The letter dated 5/1/98 to Rick Bevington from Ted Williams 22</p> <p>8 2 The letter dated 5/15/01 to Rick from Ted Williams 24</p> <p>9 3 The document entitled, "The America's Sales Division Monthly Report March FY 2001," 53</p> <p>10 4 The two pages of e-mails, Bates Nos. MRO 00349 and MRO 00350 56</p> <p>11 5 The document entitled, "Announcing Application Hosting for MAXIMO," Bates Nos. MRO 01386 and MRO 01387 58</p> <p>12 6 The four-page document containing e-mails, Bates MRO 00336 through MRO 00339 73</p> <p>13 7 The letter dated 10/21/02 to Chip Drapeau from Rick Bevington 77</p> <p>14 8 The e-mail dated 3/4/02 to Bob Parker from Ray Miciek, Bates No. MRO 00134 113</p> <p>15 9 The two pages of e-mails, Bates Nos. MRO 00173 and MRO 00174 117</p> <p>16 10 The e-mail dated 4/17/03 to Ted Williams from Walt Vanderlaan, Bates No. MRO 00024 128</p> <p>17 18 19 20 21 22 23 24</p>
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<p>1 APPEARANCES:</p> <p>2</p> <p>3 MARK S. RESNICK, ESQUIRE 4 Fee, Rosse & Lanz, P.C. 5 321 Boston Post Road 6 Sudbury, Massachusetts 01776 7 On behalf of the Plaintiff</p> <p>8 LEE GESMER, ESQUIRE 9 Gesmer UpdeGrove, LLP 10 40 Broad Street 11 Boston, Massachusetts 02109 12 On behalf of the Defendant 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p>1 TED WILLIAMS, 2 a witness called on behalf of the 3 Plaintiff, having first been duly sworn, 4 deposes and says as follows:</p> <p>5 MR. RESNICK: Good morning, 6 Mr. Williams. My name is Mark Resnick. I 7 represent the plaintiffs -- the plaintiff 8 in this the case for which you have been 9 subpoenaed today.</p> <p>10 Before we start the 11 deposition, I want to state for the record 12 that the parties have stipulated to the 13 usual stipulations: All objections, except 14 motions to strike and objections as to 15 form, will be reserved until time of trial.</p> <p>16 The witness can read and sign 17 within 30 days. We will waive the notary.</p> <p>18 I think that's it on 19 stipulations.</p> <p>20 Mr. Williams, have you ever 21 been deposed before?</p> <p>22 THE WITNESS: Many years ago.</p> <p>23 MR. RESNICK: Okay. I'll be 24 asking you a series of questions today.</p>

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<p>1 discussing business opportunities that he</p> <p>2 was pursuing with MAXIMO with a flow of</p> <p>3 opportunities from MRO to M2 with how the</p> <p>4 two sales forces would work together. It</p> <p>5 all seems to me to be covered in those</p> <p>6 topics all the time.</p> <p>7 Q Okay. So please tell me what you</p> <p>8 specifically remember being discussed</p> <p>9 regarding business opportunities that M2</p> <p>10 was pursuing for MAXIMO at these meetings.</p> <p>11 A I don't remember any specifics.</p> <p>12 Q Please tell me specifically what you</p> <p>13 remember discussing with Mr. Bevington</p> <p>14 regarding the flow of opportunities from</p> <p>15 MRO to M2.</p> <p>16 A I don't have any specifics about that.</p> <p>17 Q Do you remember any specifics being</p> <p>18 discussed at any of these meetings</p> <p>19 regarding how the two sales forces would</p> <p>20 work together?</p> <p>21 A No.</p> <p>22 Q Do you have any specific recollection at</p> <p>23 all of anything discussed at any meeting</p> <p>24 where Mr. Bevington was present?</p>	<p>1 One was, there was more effort</p> <p>2 and expense required on MRO's part to</p> <p>3 assist than had originally been</p> <p>4 anticipated; and to make it more attractive</p> <p>5 for the sales consultants, the MRO's sales</p> <p>6 consultants.</p> <p>7 Q Had a problem been identified that required</p> <p>8 MRO to make it more attractive for the MRO</p> <p>9 sales consultants?</p> <p>10 A It was a combination of the extra expense</p> <p>11 required to support M2 and the commission</p> <p>12 structure.</p> <p>13 Q Try to answer the question I asked you?</p> <p>14 MR. RESNICK: Can you read it</p> <p>15 back, please.</p> <p>16 (The question was read back as</p> <p>17 follows:</p> <p>18 "QUESTION: Had a problem been</p> <p>19 identified that required MRO to make it</p> <p>20 more attractive for the MRO sales</p> <p>21 consultants?")</p> <p>22 A Yes.</p> <p>23 Q And what was the problem that had been</p> <p>24 identified?</p>
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<p>1 A No.</p> <p>2 Q Do you remember whether you ever talked</p> <p>3 about the issue of MRO figuring out how to</p> <p>4 pay commissions to its sales force for M2</p> <p>5 web hosting business?</p> <p>6 A Yes.</p> <p>7 Q Do you remember specifically what was</p> <p>8 discussed?</p> <p>9 A No.</p> <p>10 Q Do you recall that in 2002 MRO and M2</p> <p>11 signed a new agreement?</p> <p>12 A Yes.</p> <p>13 Q Did Parker inform you that he was</p> <p>14 attempting to renegotiate or sign a new</p> <p>15 agreement with M2?</p> <p>16 A Yes.</p> <p>17 Q Did he tell you why?</p> <p>18 A I think the primary reason was related to</p> <p>19 the discount schedule.</p> <p>20 Q MRO wanted the discount to be reduced, is</p> <p>21 that correct?</p> <p>22 A Correct.</p> <p>23 Q Why did it want the discount to be reduced?</p> <p>24 A I think for two primary reasons.</p>	<p>1 A The net revenue to MRO was too low to</p> <p>2 generate commissions for the sales force.</p> <p>3 Q Do you have any recollection as to what</p> <p>4 that net revenue figure was?</p> <p>5 A Well, you've referred to the 80 percent</p> <p>6 discount, so it was 20 percent net to MRO.</p> <p>7 Q And the totals were too low to generate</p> <p>8 commission, or was it based on the</p> <p>9 percentage?</p> <p>10 A It was based on a percentage.</p> <p>11 Q Did Mr. Parker report to you on the</p> <p>12 progress of these negotiations to sign up a</p> <p>13 new agreement with M2?</p> <p>14 A Yes.</p> <p>15 Q Do you recall him telling you anything</p> <p>16 specifically about any issues that were the</p> <p>17 subject of this negotiation other than the</p> <p>18 change in the discount rate?</p> <p>19 A No.</p> <p>20 Q Other than discussing M2's capabilities in</p> <p>21 these telephone conferences to which we</p> <p>22 discussed earlier and at the sales</p> <p>23 meetings, did MRO do anything else to</p> <p>24 inform its sales force about M2's</p>



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MRO Software, Inc., et al.**

**Jeffrey A. Foley
Vol. 1, October 5, 2005**

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Volume I
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Exhibits 53 to 59
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
(EASTERN DIVISION)
M2 CONSULTING, INC.,
Plaintiff,
vs. Civil Action
No. 03-12589-GAO
MRO SOFTWARE, INC., and CRAIG
NEWFIELD,
Defendants.
DEPOSITION OF JEFFREY A. FOLEY, a witness
called on behalf of the Defendants, taken pursuant
to the Federal Rules of Civil Procedure, before
Linda A. Walsh, Registered Professional Reporter and
Notary Public in and for the Commonwealth of
Massachusetts, at the Offices of Gesmer Updegrave
LLP, 40 Broad Street, Boston, Massachusetts, on
Wednesday, October 5, 2005, commencing at 10:05 a.m.
PRESENT
Fee, Rosse & Lanz, P.C.
(By Mark S. Resnick, Esq.)
321 Boston Post Road, Sudbury, MA 01776,
for the Plaintiff.
Gesmer Updegrave LLP
(By Lee T. Gesmer, Esq.)
40 Broad Street, Boston, MA 02109, for the
Defendants.

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Inc., Mantis for Maximo Application
Hosting Business and Implementation
Deliverable"

**PROCEEDINGS
JEFFREY A. FOLEY**

[1]
[2]
[3] a witness called for examination by counsel for the
[4] Defendants, having been satisfactorily identified by
[5] the production of his driver's license and being
[6] first duly sworn by the Notary Public, was examined
[7] and testified as follows:

**DIRECT EXAMINATION
BY MR. GESMER:**

[10] Q: Will you state your full name, please.
[11] A: Jeffrey Allen Foley, F-o-l-e-y.
[12] Q: Where do you live, Mr. Foley?
[13] A: Newnan, Georgia.
[14] Q: And your street address?
[15] A: 25 Heron Point in Newnan, Georgia.
[16] Q: Will you describe your educational
[17] background briefly post high school.
[18] A: Post high school?
[19] Q: Post high school.
[20] A: United States Navy.
[21] Q: And what rank did you rise to in the U.S.
[22] Navy?
[23] A: E6.
[24] Q: You don't have a college degree of any

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[1] sort?
[2] A: No.
[3] Q: Will you describe your work background
[4] starting with post high school?
[5] A: United States Navy for nine years. Do you
[6] want to know what I did in the Navy?
[7] Q: Not now, no.
[8] A: United States Navy nine years. Servidyne
[9] Systems for I don't know how many years, two or
[10] three, and then M2 Consulting.
[11] Q: And you began working with Mr. Bevington at
[12] M2 Consulting in 1999; is that correct?
[13] A: It sounds right.
[14] Q: You were a cofounder of M2 Consulting,
[15] correct?
[16] A: Correct.
[17] Q: And you are a shareholder?
[18] A: Yes.
[19] Q: What percentage of the company shares do
[20] you own?
[21] A: Just under 20 percent.
[22] Q: Are you a director?
[23] A: Yes.
[24] Q: Are you an officer?

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[1] always summer, at an MRO user conference where
[2] obviously we met with various members of the sales
[3] team for MRO, different people at different levels.
[4] I was introduced to them through either Rick or
[5] Milton or Ray Miciek would walk me around and
[6] introduce me to different people.
[7] We set up a booth. We paid to have a booth
[8] there. So during that time yes, we talked to as
[9] many salespeople as we could to let them know what
[10] we were doing. At that point, you know, our
[11] relationship was — in my mind M2 was, you know, kind
[12] of an ensemb, but we had some support with Ray
[13] Miciek. He works out of Atlanta, and he would
[14] answer our questions and help us and introduce us to
[15] different people in the sales force. So they were
[16] aware of who we were, and in those tangential
[17] meetings we were always trying to say, "We are here.
[18] We are available."
[19] So I met with several people, and
[20] specifically we had a sit-down meeting with
[21] Mr. Daniels at the MRO conference. He asked us to
[22] talk about what we were doing, and how we are doing.
[23] And he was talking about ASP — ACSP, because that
[24] was his big concern, where does the — in our model

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[1] how does MRO get ACSP dollars, and we talked to him
[2] about, "Well, when you rent through us we are paying
[3] you royalties. When they rent through us we pay MRO
[4] royalties. So they get a smaller dollar every
[5] month, but over 12 months they literally recoup just
[6] as if they sold it themselves." He then said, "What
[7] about ACSP," and those conversations happened a few
[8] times. I was in Atlanta when I want to say Ted
[9] Williams came down — it may not have been Ted —
[10] and again, they were concerned about ACSP, how do
[11] they do it. So it became very apparent to us that
[12] there was some resistance, even though we had this
[13] agreement, on the sales side because they just
[14] couldn't see how all the dollars that could be
[15] generated, how they get distributed in MRO. So I
[16] was involved in some of those meetings tangentially
[17] where I get introduced. I sit down, and I listen to
[18] the conversations. Does that help you?
[19] Q: Yes, yes. That's what I was looking for.
[20] ASCP is another term for maintenance and support; is
[21] that right?
[22] A: I think it's ACSP.
[23] Q: ACSP, maintenance and support?
[24] A: Basically.

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[1] Q: So you heard MRO struggling with the
[2] economic model of renting its software through M2's
[3] hosting contract or licensing it directly to
[4] customers?
[5] A: I heard that?
[6] Q: Yes.
[7] A: At some point after we had been involved in
[8] this agreement and worked with their team it became
[9] clear that our product, as we envisioned it, wasn't
[10] being deployed or utilized as we had hoped through
[11] the MRO sales force. And in our mind, based on
[12] those conversations and some I participated in
[13] specifically, that ACSP and compensating the sales
[14] force was something that needed to be worked out.
[15] Unfortunately it took a long time, but I know that
[16] Rick spent a lot of time working that out, creating
[17] models, sending e-mails to Ray, talking to Bob. So
[18] eventually, you know, we thought we would help them
[19] help themselves, and that was our approach, trying
[20] to give them ways and show them financially how they
[21] could pay their sales force with those dollars. And
[22] this is between 2000 and 2002.
[23] Q: Okay. Were you present at any meet ings
[24] with MRO where MRO committed to roll out the M2

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[1] service to the MRO sales force?
[2] A: Between 2000 and 2002?
[3] Q: Yes, between the two agreements.
[4] A: At that point I feel like I was in meetings
[5] where everyone knew that there was a problem in
[6] getting it rolled out. So getting it rolled out
[7] obviously was our goal. I actually went to a sales
[8] presentation in Atlanta that Rick did to Ray
[9] Miciek's team in Atlanta to show them what we do,
[10] who we are, present them, because we felt we needed
[11] to take the lead because MRO wasn't. So Rick went
[12] into Atlanta. I went with him. He talked to the
[13] folks, explained our model, explained how to sell
[14] it, gave them cut sheets for us. So, you know, in
[15] my mind it was just inferred. They wanted to. It
[16] just wasn't happening. And Ray Miciek at least
[17] provided some gateways to access his sales team.
[18] But as a global rollout it never happened,
[19] and in my mind almost all the meetings were about
[20] when can we get this globally rolled out. So I
[21] would have to say it inferred that everyone had the
[22] expectation that it would happen. It just didn't
[23] happen during that period.
[24] Q: Were you present at any meeting before the

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[1] May 22nd, 2002. First, have you ever spoken to
[2] Nancy Gilroy?
[3] A: I don't believe so.
[4] Q: Now, do you see in this cover e-mail which
[5] is, by the way, sending another draft of the
[6] contract back, it says, "The main area of
[7] enhancement" —
[8] A: Where are we?
[9] Q: I am in the middle of that paragraph where
[10] he says, "Hi, Nancy."
[11] A: Okay.
[12] Q: The third sentence in, maybe the fourth
[13] sentence in — well, first he says, "Attached are
[14] modified agreements for your review and comment" and
[15] then he — jumping ahead two sentences he says, "The
[16] main area of enhancement are in: Term of agreement;
[17] termination events; and trying to capture what we
[18] believe is part of the intent, that being to have an
[19] arrangement that allows MRO sales to offer hosting
[20] to prospects who fit the profile or who request it,
[21] and still be recognized with quota credit and comp."
[22] Do you see those words?
[23] A: Yes, I do.
[24] Q: Do you remember seeing this paragraph

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[1] before today — have you seen this paragraph in
[2] Exhibit 21 before today?
[3] A: I don't recall it, but Rick very well may
[4] have forwarded it to me. If he did, I would have
[5] given it to you. I don't think I have seen it
[6] specifically given to me.
[7] Q: Do you remember discussing with
[8] Mr. Bevington during the period this contract was
[9] under negotiation — and you remember it was under
[10] negotiation for five or six months?
[11] A: I know that they started it, and I know it
[12] took a very long time to get done. I don't know the
[13] dates.
[14] Q: Let me represent to you it was roughly
[15] April of 2002 to November 2002.
[16] A: Okay.
[17] Q: Do you remember discussing with
[18] Mr. Bevington including in the agreement a provision
[19] that would establish an arrangement that would allow
[20] MRO sales to offer hosting to prospects who fit the
[21] profile or who request it and still be recognized
[22] with quota credit and comp?
[23] A: I am going to say not specifically, but
[24] Rick and I both — you know, Rick handled these

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[1] things. I was there. He'd sound off information to
[2] me. I was a sounding board, maybe a gut check. So
[3] I am sure we had conversations over the time about
[4] this contract here and there and mostly because it
[5] wasn't working with the previous one, and if they
[6] want us to enter another one — it was a financial
[7] thing, and we felt the only way their sales force
[8] would live up to it is if MRO recognized them as a
[9] sales force and quota credits. So it doesn't
[10] surprise me that on a financial basis Rick wanted to
[11] make sure they helped out their own sales force
[12] within this document if they in fact did. But as a
[13] company, that was one of our concerns with that is
[14] that their sales force feels they didn't get
[15] credited. The topic comes up, but I wasn't
[16] specifically involved in it.
[17] Q: So I take it you don't remember saying to
[18] Mr. Bevington in effect, "Make sure that this new
[19] agreement establishes an obligation for MRO to comp.
[20] its sales force so they will have an incentive to
[21] sell our service"?
[22] A: Probably not in those words, no. But
[23] obviously one of our concerns, as him and I would
[24] talk, was that MRO does compensate the sales force

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[1] somehow. I don't even know how that gets
[2] memorialized at the end of the day, but from my
[3] perspective the only thing that him and I ever
[4] talked about, that was my "must have," is that MRO
[5] releases it to the sales force. That's part of
[6] their tool kit. Rick and I would talk about that,
[7] and he had meetings to get those assurances. Other
[8] than that, to me this was a financial document to
[9] make sure — because they were asking a whole lot
[10] more of us in this document. The other document was
[11] great as far as I was concerned. The requirement,
[12] for me to be happy, was that their sales force gets
[13] this product — our services gets released to their
[14] sales force. That was my primary concern in life.
[15] Q: Did you ever say to Mr. Bevington, during
[16] this spring and summer and fall of 2002 while this
[17] contract was being negotiated, "Gee, Rick, make sure
[18] that this contract requires that MRO roll out our
[19] product to its sales force"?
[20] A: No. No, probably not. Because by the time
[21] we signed this contract we were given assurances
[22] that it was going to go right to sales. It's
[23] something that we strung on for two years. They
[24] gave us assurances that it was going right to sales.

EXHIBIT

I

tabbles

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**Seth T. Stewart
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Exhibits: None
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
(EASTERN DIVISION)
M2 CONSULTING, INC.,
Plaintiff,
vs. Civil Action
No. 03-12589-GAO
MRO SOFTWARE, INC., and CRAIG
NEWFIELD,
Defendants.
DEPOSITION OF SETH T. STEWART, a witness
called on behalf of the Defendants, taken pursuant
to the Federal Rules of Civil Procedure, before
Linda A. Walsh, Registered Professional Reporter and
Notary Public in and for the Commonwealth of
Massachusetts, at the Offices of Gesmer Updegrove
LLP, 40 Broad Street, Boston, Massachusetts, on
Tuesday, October 4, 2005, commencing at 10:08 a.m.
PRESENT:
Fee, Rosse & Lanz, P.C.
(By Mark S. Resnick, Esq.)
321 Boston Post Road, Sudbury, MA 01776,
for the Plaintiff.
Gesmer Updegrove LLP
(By Lee T. Gesmer, Esq.)
40 Broad Street, Boston, MA 02109, for the
Defendants.

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SETH T. STEWART**

[1]
[2]
[3] a witness called for examination by counsel for the
[4] Defendants, having been satisfactorily identified by
[5] the production of his driver's license and being
[6] first duly sworn by the Notary Public, was examined
[7] and testified as follows:

**DIRECT EXAMINATION
BY MR. GESMER:**

[10] **Q:** Mr. Stewart, I am Lee Gesmer. You are
[11] testifying here today in the case of M2 versus MRO,
[12] correct?
[13] **A:** Correct.
[14] **Q:** Where do you live?
[15] **A:** New Canaan, Connecticut.
[16] **Q:** What's your address?
[17] **A:** 96 Cross Ridge Road.
[18] **Q:** Where are you employed?
[19] **A:** I work for a company called Open Business
[20] Exchange.
[21] **Q:** Where is that company located?
[22] **A:** It's headquartered in London, England.
[23] **Q:** Do you refer to it as OBI?
[24] **A:** It's OBE.

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[1] **Q:** OBE. Sorry.
[2] And what's your position with OBE?
[3] **A:** I am — my exact title is vice-president,
[4] corporate accounts. I am responsible for sales and
[5] business development.
[6] **Q:** Is that a full-time job?
[7] **A:** Yes.
[8] **Q:** Does OBE have an office in the United
[9] States?
[10] **A:** Yes. Its U.S. headquarters is in San
[11] Francisco, and we have satellite and virtual offices
[12] around the country.
[13] **Q:** Will you summarize your educational
[14] background post high school?
[15] **A:** Yes. I graduated — I have a B.A. from
[16] Princeton University and then I took advanced course
[17] work in accounting from NYU.
[18] **Q:** So your only degree is the undergraduate
[19] degree from Princeton?
[20] **A:** That's correct.
[21] **Q:** When did you graduate from Princeton?
[22] **A:** 1985.
[23] **Q:** And would you summarize for us your
[24] employment history post graduation from Princeton.

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[1] agreement with MRO Software," and it goes on to say,
[2] "MRO may sue to protect this market from penetration
[3] by Indus." Do you remember discussing that issue
[4] with Mr. Bevington?

[5] **A:** Yes.

[6] **Q:** What was the nature of your discussion?

[7] **A:** I remember — I don't remember specifically
[8] talking about lawsuits, but I do remember that Indus
[9] was moving very quickly. They had a need to get
[10] into this business, and Rick had to put them — push
[11] them off really. I mean, they were moving very
[12] quickly, and Rick was postponing those discussions
[13] because he wanted to — didn't want to screw up the
[14] Maximo relationship. And you know, I think there
[15] was concern on Rick's part that if he just all of a
[16] sudden did something with Indus that there would be
[17] repercussions from MRO because there had been all
[18] these sort of referable or written agreements. So I
[19] do remember having those conversations. I do not
[20] remember the particulars.

[21] **Q:** Look at the next exhibit, No. 28. Now, if
[22] you look down at the bottom of the first page,
[23] Mr. Bevington writes to Mr. Parker, "Thanks for
[24] making the trip to the abbey. It was a great course

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[1] and then I drove home after that.

[2] **Q:** What business between M2 and MRO was
[3] discussed at this meeting or during this day?

[4] **A:** During the golf round frankly there wasn't
[5] a lot of — you know, there was a lot of casual
[6] conversation, not so much about business. Then we
[7] had lunch, and we were talking about the particulars
[8] of how this rollout would occur. And then, you
[9] know, as we are walking Bob in the parking lot, you
[10] know, Rick asked Bob, "Bob, is this a done deal?"
[11] And Bob said, "Absolutely this is a done deal." And
[12] Rick said, "Are we going to roll this out to
[13] the" — "just to the middle market sales
[14] organization or is it going to be large and middle,"
[15] and Bob said, "Large and middle." But he
[16] emphatically reiterated that this was a done deal,
[17] that it had been approved by Chip. It had been
[18] approved by the powers at be, MRO, and, you know, it
[19] was done.

[20] **Q:** Let's back up a little bit. What business
[21] was discussed over lunch?

[22] **A:** Again, I think we were talking a lot about
[23] Rick's financials. You know, how many customers,
[24] what is the volume, how much do you get per customer

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[1] and great fun"?

[2] **A:** Yes.

[3] **Q:** Now, is this the Rhode Island golf game you
[4] referred to?

[5] **A:** Yes, yes.

[6] **Q:** Who attended this golf game?

[7] **A:** My recollection is it was myself, Rick
[8] Bevington, Bob Parker and Ted Williams.

[9] **Q:** Drapeau was not there?

[10] **A:** No.

[11] **Q:** Was this the first time you met
[12] Mr. Williams?

[13] **A:** Yes.

[14] **Q:** What were the logistics for this meeting?
[15] When did you arrive? When did you leave? When did
[16] others arrive? When did they leave?

[17] **A:** I spent the night in Newport the night
[18] before. Rick and I stayed at the same hotel. He
[19] and I drove to the golf course together. We arrived
[20] there around 9:30, and I believe we had a 10:00
[21] tee-off time. And we played golf till about 1:30
[22] and then we had a lunch meeting afterwards, and
[23] after the lunch meeting we walked Bob Parker to his
[24] car. So that's basically the day, the logistics,

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[1] per seat, blah-blah-blah, a lot of that type of
[2] conversation, and it was really to bring Ted up to
[3] speed, not for Bob's benefit. I think it was Ted
[4] wanting to — if I understood correctly, Bob
[5] reported to Ted who reported to Chip, and so this
[6] was Ted's opportunity to ask directly, you know,
[7] kind of what the business was all about. So it was
[8] a bit of an education for Ted, but I specifically
[9] remember kind of going through — for some reason I
[10] think there was a spreadsheet there or something
[11] where Ted was going through the numbers, you know,
[12] all the customers that M2 had, how much the recurring
[13] billing rate was.

[14] **Q:** So Mr. Williams was being educated —

[15] **A:** Correct —

[16] **Q:** — by M2 business?

[17] **A:** — on the specifics of the economics of his
[18] business.

[19] **Q:** On the economics of the business?

[20] **A:** Yes.

[21] **Q:** And there was no discussion about, you
[22] know, this done deal, you know, rollout, those
[23] topics, during the four of you at lunch? It was
[24] later when you walked Mr. Parker to his car?

EXHIBIT

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
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M2 CONSULTING, INC.,
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DEPOSITION OF DAVID A. BIGLER, a witness
called on behalf of the Defendants, taken pursuant
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Linda A. Walsh, Registered Professional Reporter and
Notary Public in and for the Commonwealth of
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LLP, 40 Broad Street, Boston, Massachusetts, on
Friday, October 7, 2005, commencing at 10:05 a.m.
PRESENT:
Fee, Rosse & Lanz, P.C.
(By Mark S. Resnick, Esq.)
321 Boston Post Road, Sudbury, MA 01776,
for the Plaintiff.
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**PROCEEDINGS
DAVID A. BIGLER**

[1] a witness called for examination by counsel for the
[2] Defendants, having been satisfactorily identified by
[3] the production of his driver's license and being
[4] first duly sworn by the Notary Public, was examined
[5] and testified as follows:

**DIRECT EXAMINATION
BY MR. GESMER:**

[6] **Q:** Will you state your full name, please.
[7] **A:** David Alan Bigler.
[8] **Q:** Where do you live, Mr. Bigler?
[9] **A:** 9550 South Ocean Drive, Apartment 608,
[10] Jensen Beach, J-e-n-s-e-n, Beach, Florida 34957.
[11] **Q:** And where are you employed?
[12] **A:** I'm not employed.
[13] **Q:** Will you summarize your educational
[14] background for us starting with graduation from high
[15] school.
[16] **A:** I graduated from Cleveland Heights High
[17] School in January of 1953, went to Purdue University
[18] that fall, graduated in June of 1958 with a Bachelor
[19] of Science in Mechanical Engineering.
[20] **Q:** Would you summarize your job history with

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[1] us starting with graduation from Purdue.
[2] **A:** As I say, I graduated from Purdue in June
[3] of 1958. I took a job with Johnson Controls,
[4] Incorporated. At that time it was known as Johnson
[5] Service Company, and I did a short stint in the
[6] Cleveland office which was where my home was; and
[7] then I had to go to ROTC summer camp in Fort
[8] Belvoir, Virginia, for six weeks I think it was.
[9] When I got out of that I took two weeks off and got
[10] married and then went to work the 1st of September,
[11] right after Labor Day, with Johnson Controls in the
[12] Indianapolis, Indiana, branch as a sales engineer.
[13] In the fall of 1969 I was promoted to
[14] branch manager of the office in Grand Rapids,
[15] Michigan, and then in 1973 I was promoted to branch
[16] manager of the Philadelphia branch. In 1977 I was
[17] promoted to vice-president of sales for the Canadian
[18] company, Johnson Controls Limited. Subsequently,
[19] about two years later, I was promoted to
[20] vice-president and general manager of the Canadian
[21] company.
[22] In 1981 I was promoted to managing director
[23] of Europe headquartered in Brussels, Belgium, and in
[24] nineteen — did I say '81 or '83?

David A. Bigler
Vol. 1, October 7, 2005

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MRO Software, Inc., et al.

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[1] I get his voice-mail. I leave a voice-mail saying
[2] who I was and my phone number and what I wanted to
[3] talk about. I hung up. I thought, well, that's
[4] probably the last I'll ever hear from him. He's a
[5] busy guy. He doesn't know me from Adam except for
[6] this one time we played golf. About two weeks later
[7] he calls me back, and that was the telephone call
[8] you are referring to.

[9] Q: And what was discussed during that call?

[10] A: I said, "Where are we on" — "What's going
[11] on," and he said, again, "We've got the compensation
[12] issues. Our accounting people are working on it.
[13] We are getting close. We have got the recognition
[14] of revenue issue. They are getting close on that.
[15] And there are a couple of minor things we want Rick
[16] to do, which I don't think will be a problem," and
[17] then I said, "Well, that sounds like we are moving
[18] along. How long is it going to be? 30 days or so?"
[19] He said, "At the maximum, probably less." I said,
[20] "Thanks very much for returning my call. I
[21] appreciate it. Next time you are in Atlanta give me
[22] a call, and we'll tee it up at Atlanta Country
[23] Club." Because this guy is an avid golfer I thought
[24] he would like a chance to do that.

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[1] do we go from here," right?

[2] A: Yes.

[3] Q: And one possibility was to sell M2 to MRO?

[4] A: Correct.

[5] Q: And there were discussions between M2 and
[6] MRO, along those lines, correct?

[7] A: That's my understanding.

[8] Q: Did you participate in any of those
[9] discussions?

[10] A: No.

[11] Q: You didn't go to any of the meetings that
[12] occurred around those discussions?

[13] A: No.

[14] Q: And —

[15] A: When you say that, you mean meetings with
[16] MRO?

[17] Q: Meetings with MRO, yes. Yes.

[18] A: No, that's correct, I did not.

[19] Q: That's what I mean. In late summer or
[20] early fall of 2003 the M2 board learned that MRO and
[21] M2 couldn't come to an agreement on the price of M2?

[22] A: I believe that's correct. I can't tell you
[23] that that's for certain what was said, but that's
[24] the kind of gist of it.

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[1] Q: You then called Mr. Bevington and relayed
[2] this to him?

[3] A: I e-mailed him.

[4] Q: That's the last time you spoke to anybody
[5] at MRO?

[6] A: That's correct.

[7] Q: Now, as time went on in 2003 you learned
[8] that MRO was not going to roll out this service to
[9] its sales force, correct?

[10] A: Correct.

[11] Q: Mr. Bevington told you that?

[12] A: Well, there was a date set for the rollout,
[13] as I understand it. I can't remember what it was.
[14] But that date came and went and nothing happened.
[15] And then, as I recall, Parker called Bevington and
[16] said, "The deal is off," or something like that.

[17] Q: And you learned that MRO was going to sell
[18] its own hosted service of Maximo?

[19] A: Yes.

[20] Q: And because they wanted their salespeople
[21] to sell their own service they weren't going to
[22] promote M2's service?

[23] A: Correct.

[24] Q: At that point the M2 board discussed "Where

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[1] Q: Okay. And those discussions broke up?

[2] A: Yes.

[3] Q: Now, did you as a board member of M2 at that
[4] point say to the other board members, "Well, maybe
[5] it's time to go back to Indus and see if we can
[6] resume those discussions and have Indus buy M2"?

[7] A: I don't recall that discussion.

[8] Q: You don't recall that you suggested that?

[9] A: I did not suggest it.

[10] Q: And you don't recall anyone else suggesting
[11] it?

[12] A: No.

[13] Q: Did the board of directors vote to file
[14] suit against MRO?

[15] A: I wouldn't say we voted. We have never
[16] voted on anything. We talked about it and then
[17] agreed that's what we should do.

[18] Q: Are you paid a fee — a director's fee for
[19] being on the board of M2?

[20] A: Yes. I get a free lunch after the board
[21] meeting that Rick pays for. That's it. I assume M2
[22] pays it, by the way, but Rick picks up the tab.

[23] MR. GESMER: I may be done. Let's take a
[24] short break. Let me look over my extensive notes.